



# STAFF REPORT

AGENDA ITEM: 12

L.U.C.B. MEETING: October 10, 2019

<b>CASE NUMBER:</b>	SUP 19-33	
<b>LOCATION:</b>	Eastside of North Main Street within the block bounded by Adams Avenue, Poplar Avenue, and North Second Street	
<b>COUNCIL DISTRICT:</b>	District 6 and Super District 8 – Positions 1, 2, and 3	
<b>OWNER/APPLICANT:</b>	City of Memphis / Memphis Hotel Venture LLC	
<b>REPRESENTATIVE:</b>	Kimley-Horn and Associates, Inc. – Jarmon Peregoy	
<b>REQUEST:</b>	Hotel	
<b>AREA:</b>	+/-1.57 acres	
<b>EXISTING ZONING:</b>	Central Business District (CBD)	

## CONCLUSIONS

1. The applicant is seeking the approval of a special use permit to allow a hotel of 17 stories in height with a capacity of +/-500 rooms.
2. The proposed hotel is primarily intended to serve the regional institutional asset of the Memphis Cook Convention Center. The convention center is currently undergoing significant renovations to modernize the complex with a high-quality design aesthetic in mind while adding square footage and other amenities to establish a blue-ribbon facility. However, a successful convention center requires a sufficient hotel package to support it. The proposed hotel of this development would not only add to that package, but would be the second nearest large hotel to the convention center and third closest overall while remaining within a walkable distance thereby adding a high-quality product with significant influx of hotel room capacity given the +/-500 rooms slated for construction.
3. This development will additionally make use of underutilized land while promoting infill development, mixed use, high-quality architecture and design, increased tourism and pedestrian activity, and further promote the vision of the Memphis 3.0 General Plan for the Core City.
4. As proposed, the conditions include the requirement of public pedestrian easements in order to maintain the connection between North Main Street, the City of Memphis Donnelley J. Hill Public Safety Building property, the Vasco A. Smith, Jr. County Administration Building, and North Second Street in a similar manner that exists today. Additionally, there is a requirement to remove the extra drive aisle from the North Main Street public right-of-way and redesign this area in a more pedestrian friendly manner.
5. This project will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety, and general welfare.

## CONSISTENCY WITH MEMPHIS 3.0

This proposal is consistent with the Memphis 3.0 General Plan per the land use decision criteria. See further analysis on pages 29-30 of this report.

**RECOMMENDATION:**  
*Approval with conditions*

## GENERAL INFORMATION

<b>Street Frontage:</b>	North Main Street Poplar Avenue North Second Street	+/-.623.99 linear feet +/-.59.99 linear feet +/-.96.22 linear feet
<b>Zoning Atlas Page:</b>	1925	
<b>Parcel ID:</b>	002010 00002, 002011 00001, 002011 00002, 002011 00003, 002011 00004, 002011 00005, and 002011 00006	
<b>Existing Zoning:</b>	Central Business District (CBD)	

## NEIGHBORHOOD MEETING

The meeting was held at 5:30 PM on Wednesday, September 25, 2019, at the Downtown Memphis Commission, 114 North Main Street.

## PUBLIC NOTICE

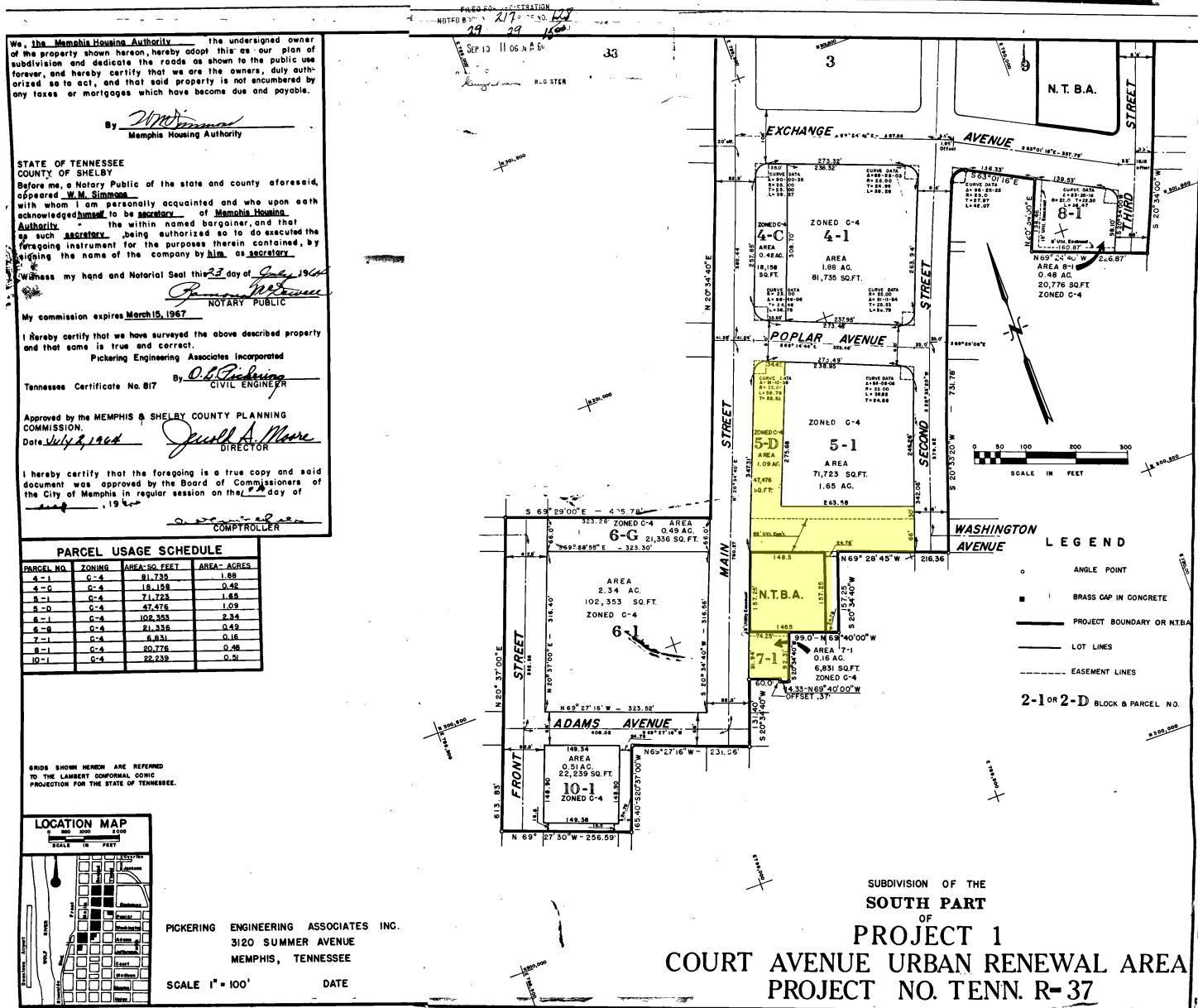
In accordance with Sub-Section 9.3.4A of the Unified Development Code, a notice of public hearing is required to be mailed and signs posted. A total of 164 notices were mailed on September 27, 2019, and a total of 3 signs posted at the subject property. The sign affidavit has been added to this report.

## LOCATION MAP



Subject property located within the pink circle, Downtown neighborhood

**SOUTH PART OF PROJECT 1 COURT AVENUE URBAN RENEWAL AREA PROJECT NO. TENN.  
R-37 (1964)**



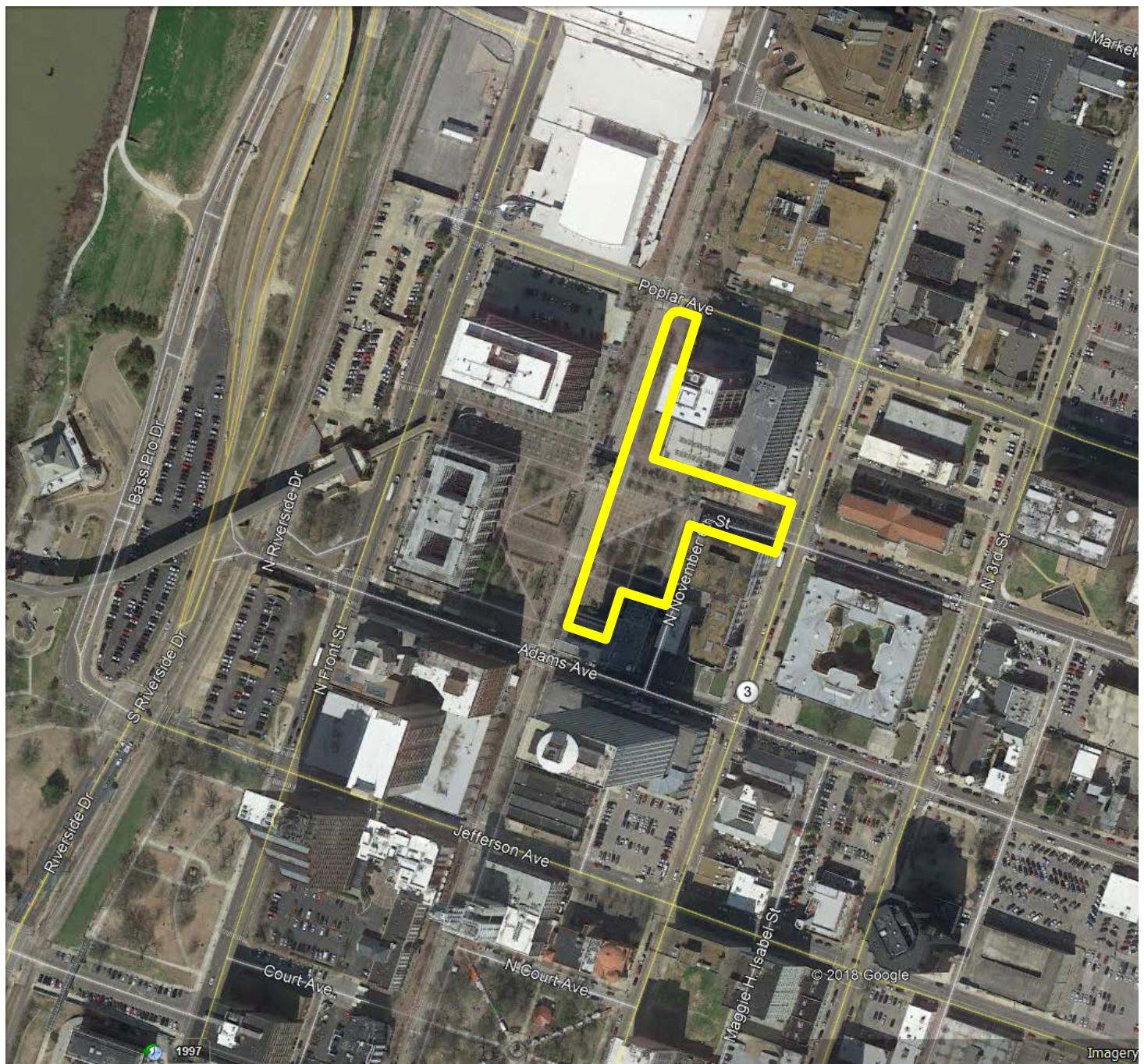
Subject property (approximate) highlighted in yellow, Plat Book 19 Page 19

## VICINITY MAP



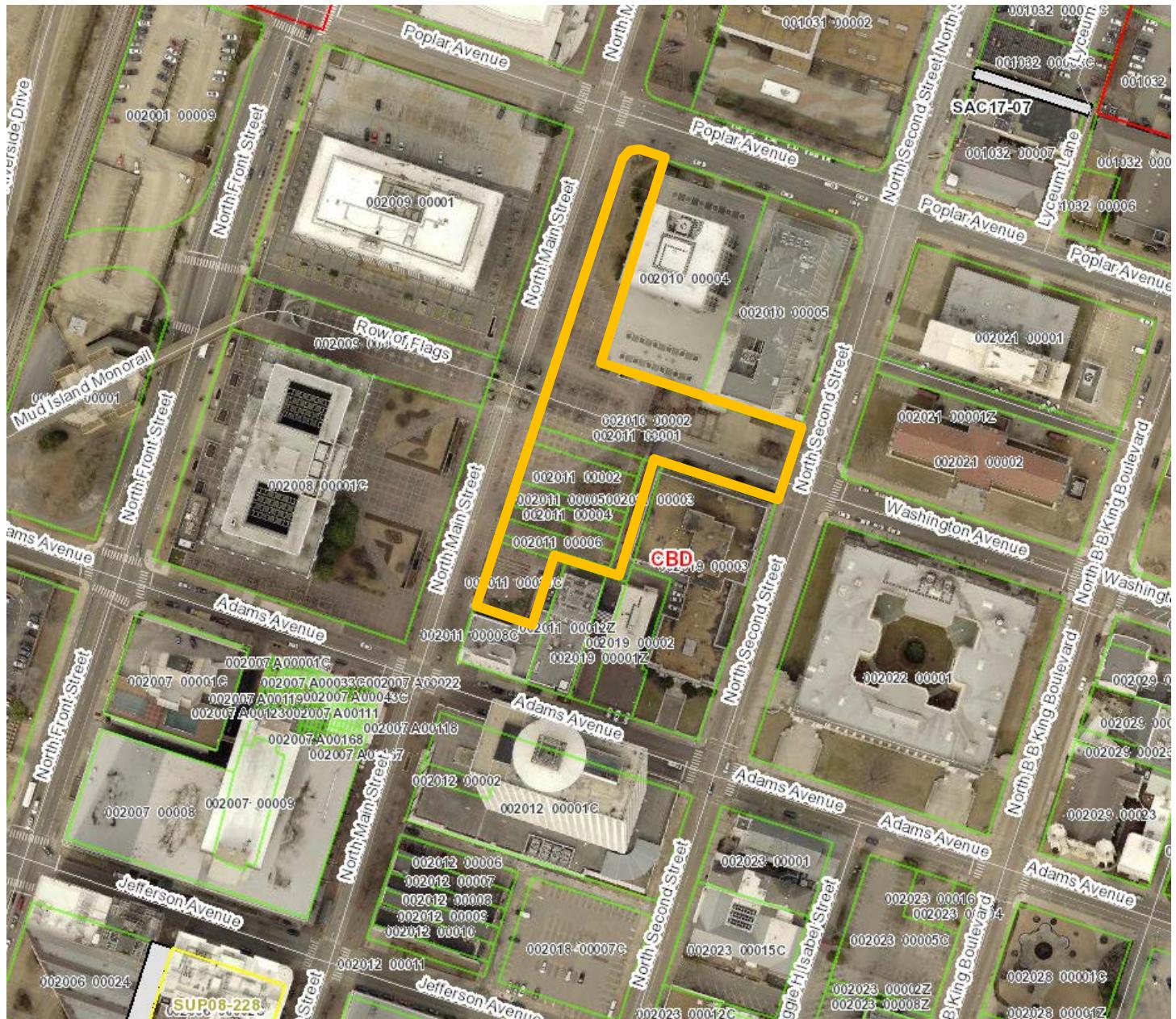
Subject property highlighted in yellow

**AERIAL**



Subject property outlined in yellow, imagery from March 14, 2018

## ZONING MAP



Subject property outlined in orange

**Existing Zoning:** Central Business District (CBD)

### Surrounding Zoning

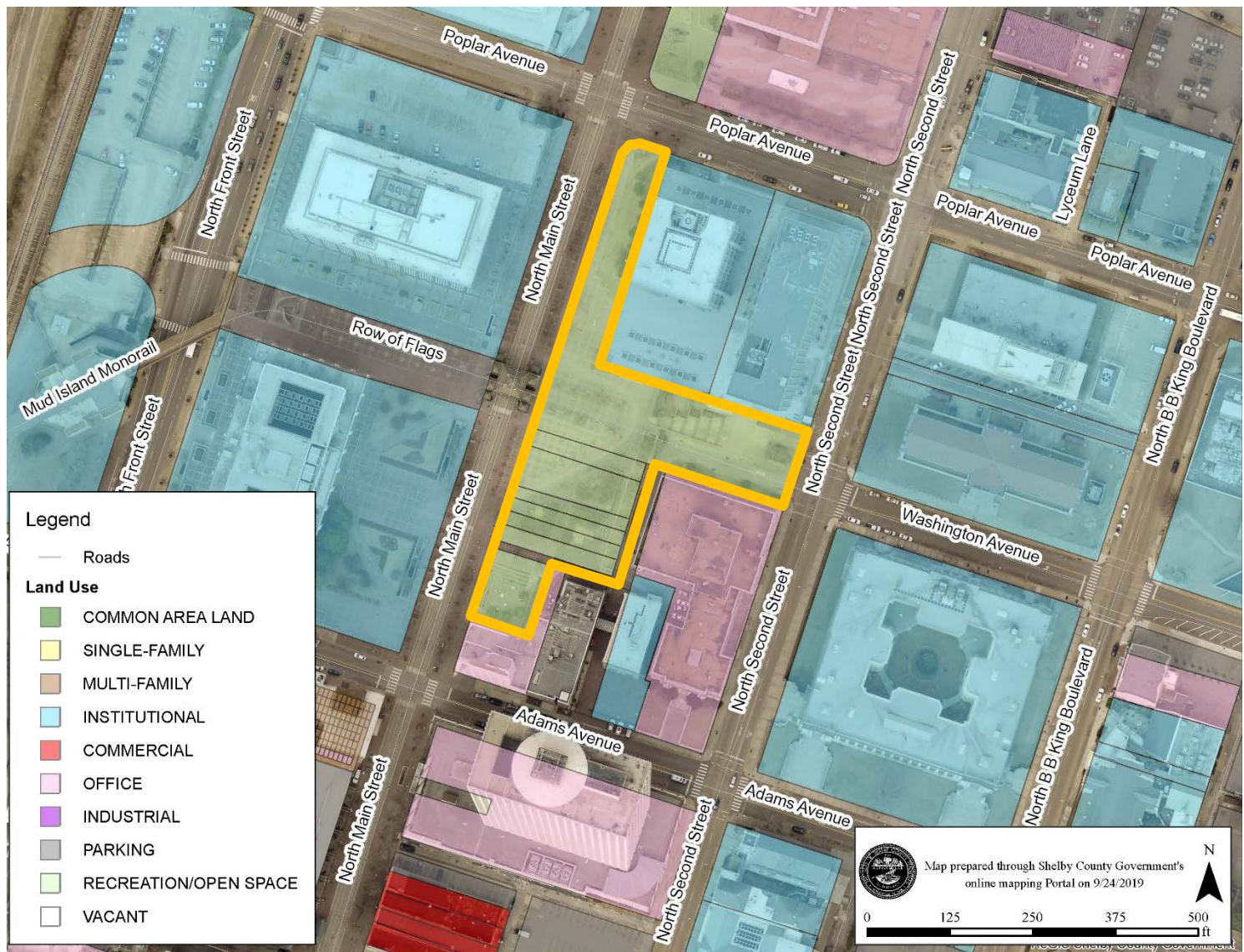
**North:** CBD

**East:** CBD

**South:** CBD

**West:** CBD

## LAND USE MAP



Subject property outlined in orange

## SITE PHOTOS

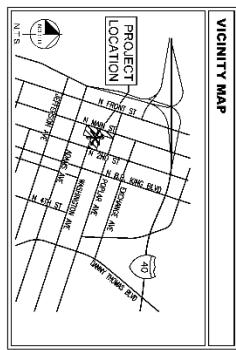
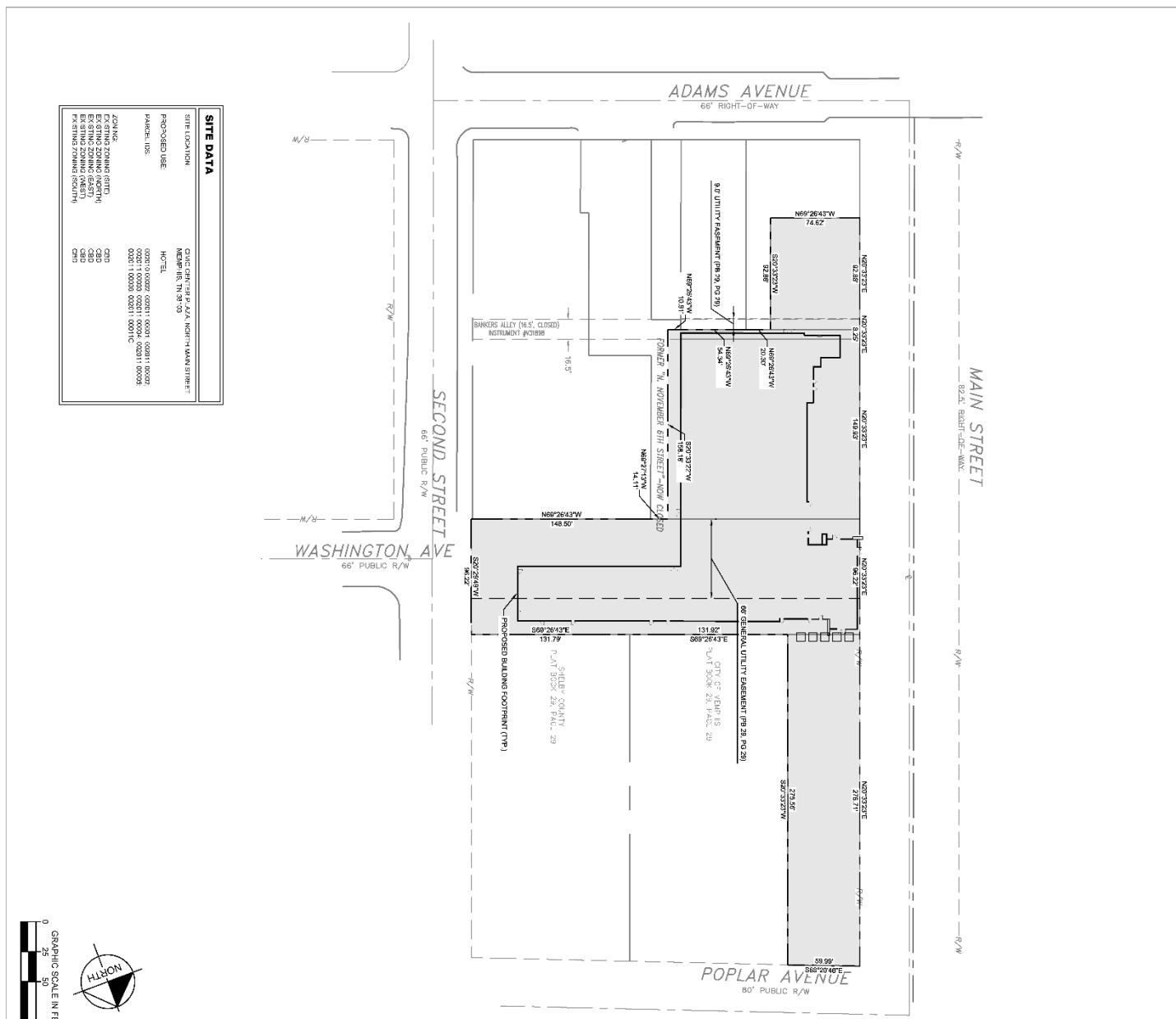


View of subject property from North Main Street looking east

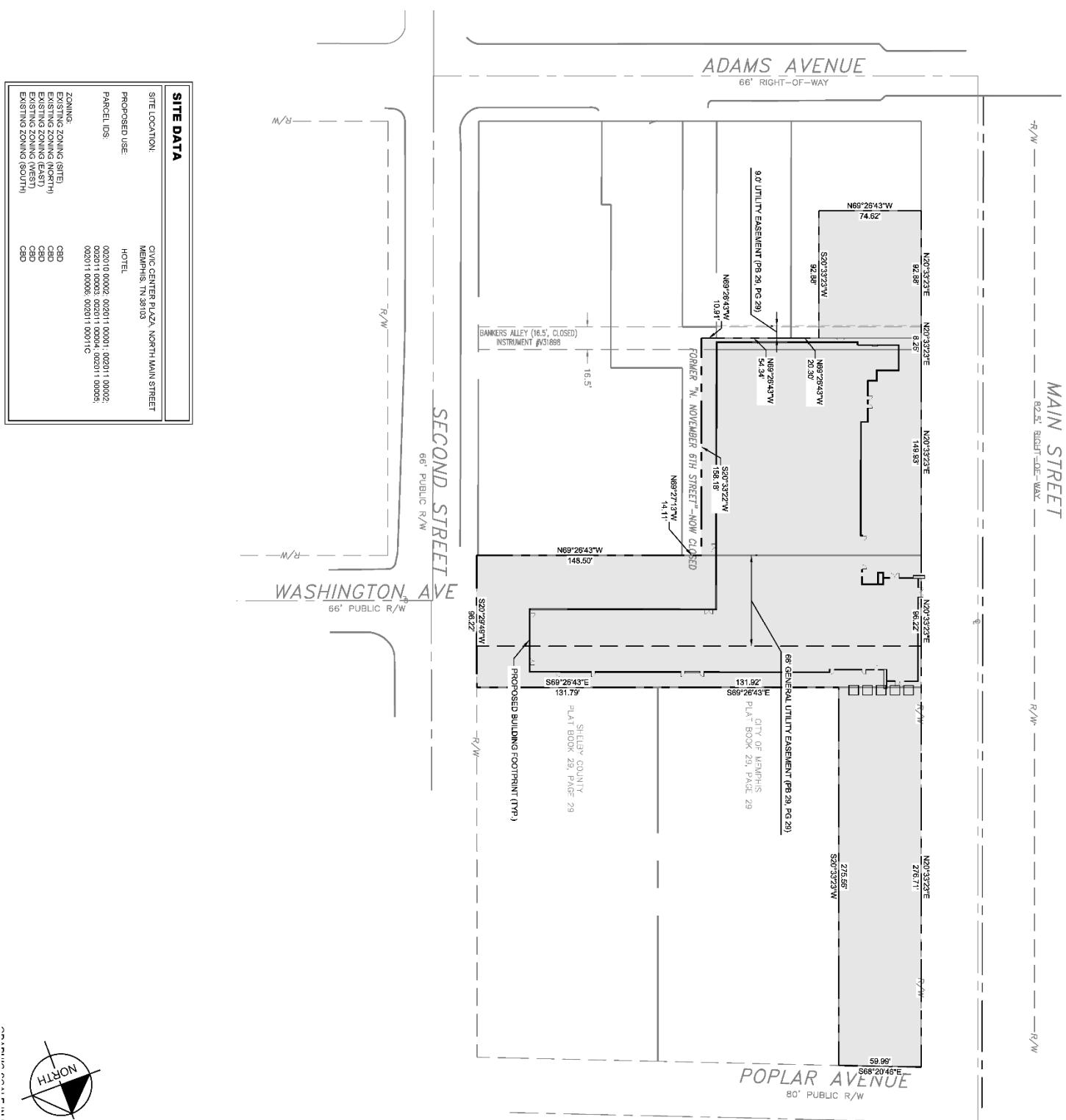


View of subject property from North Second Street looking west

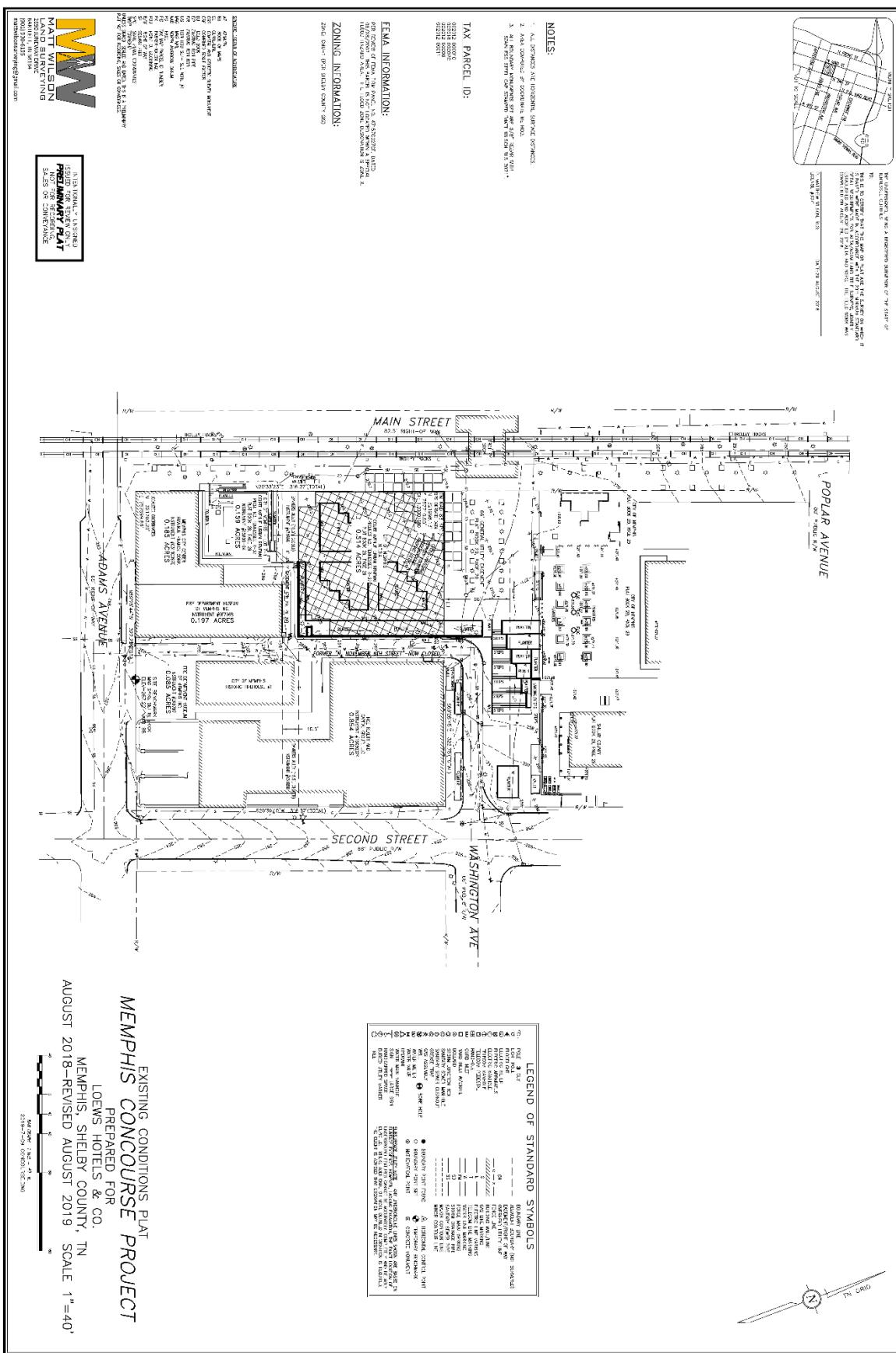
## PLOT PLAN



## **PLOT PLAN – ZOOMED**

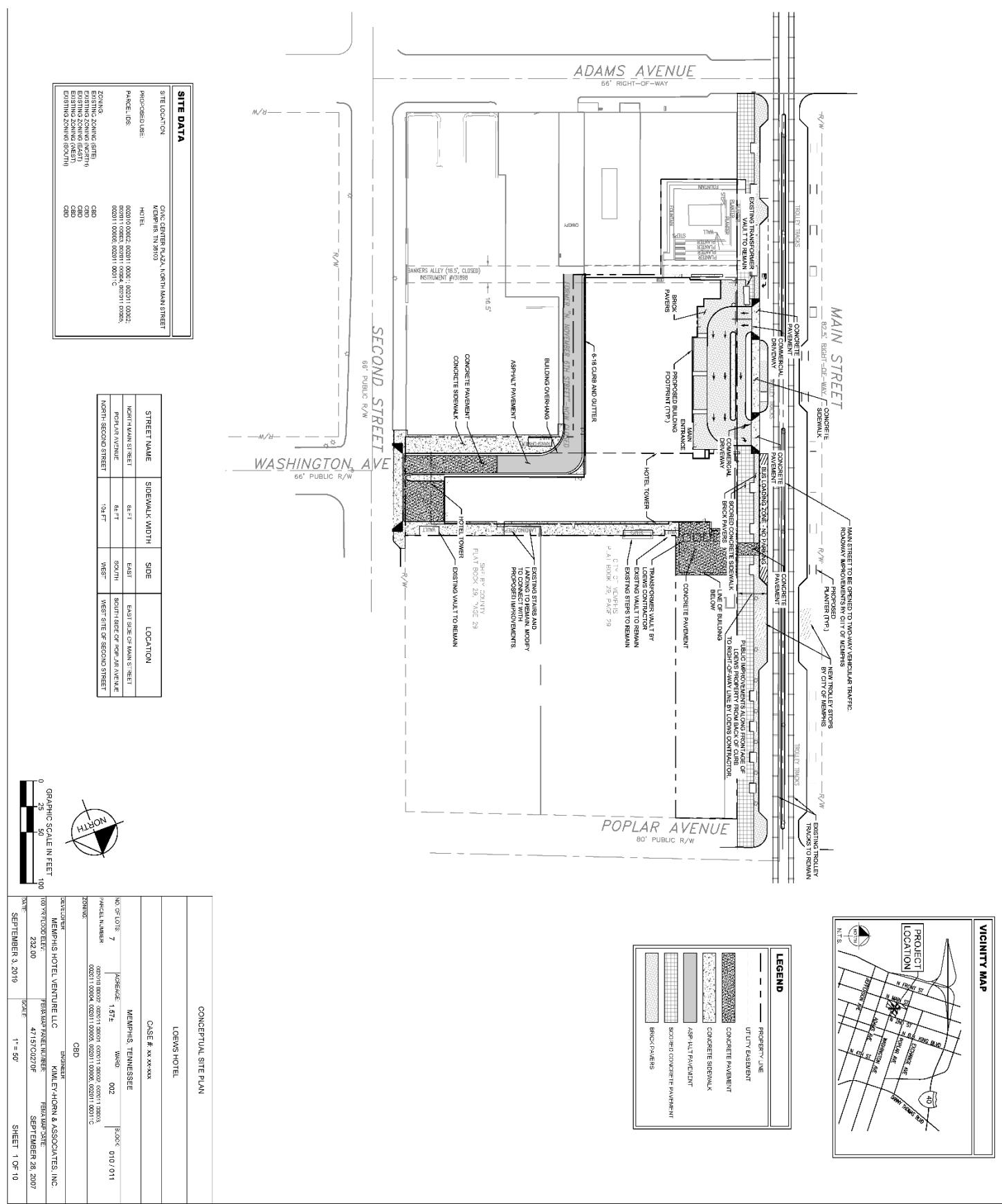


## SURVEY

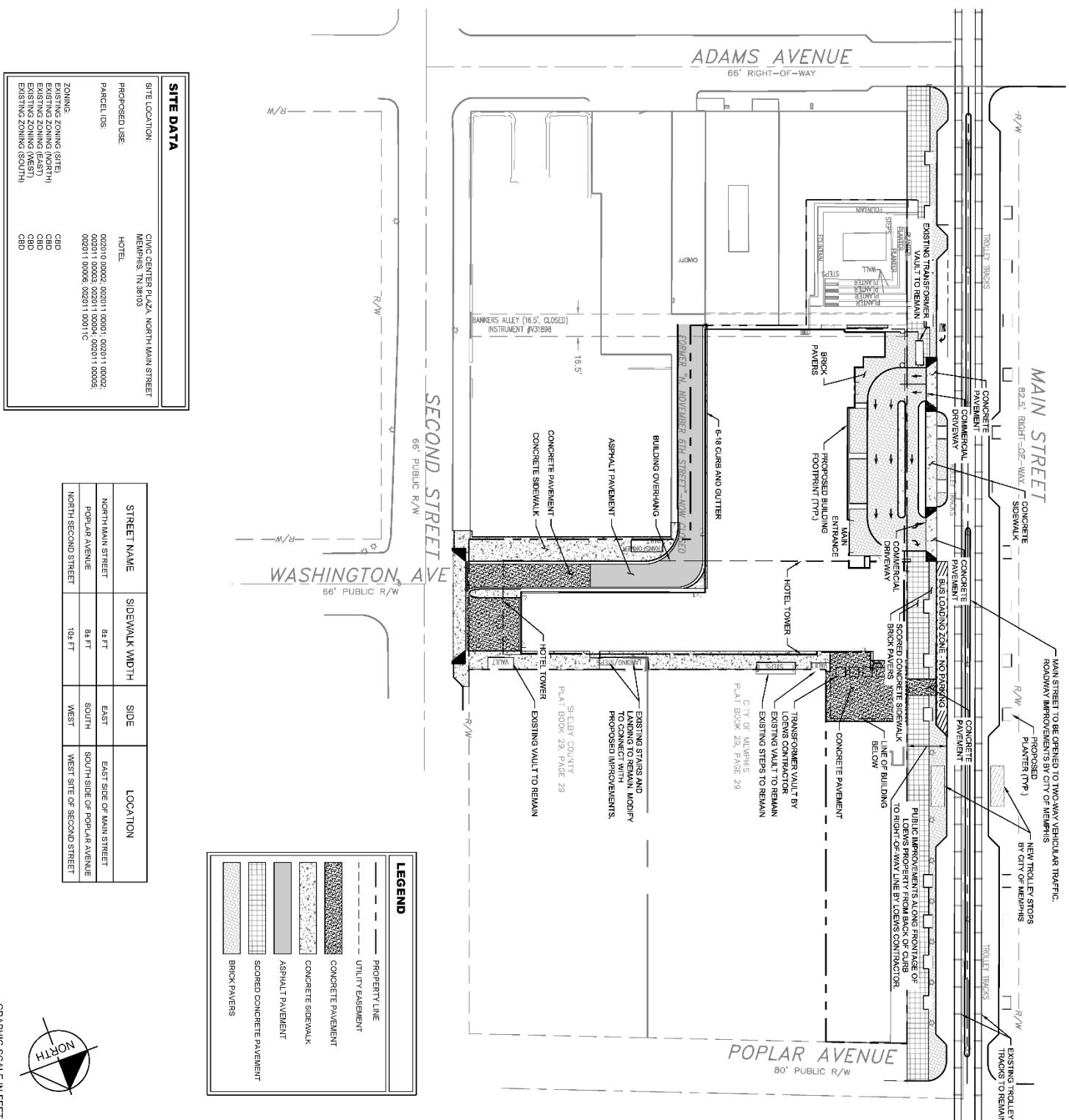




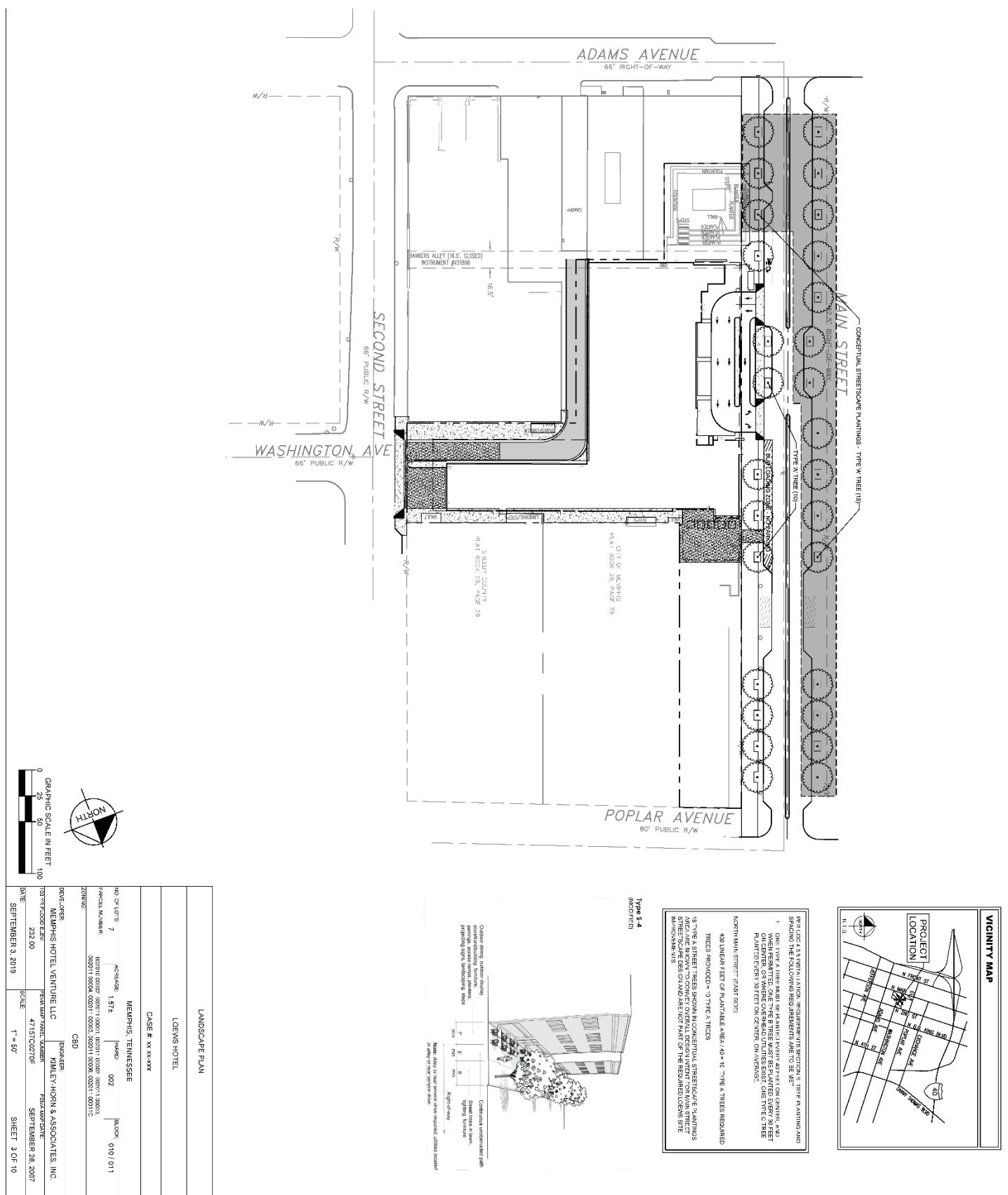
## SITE PLAN



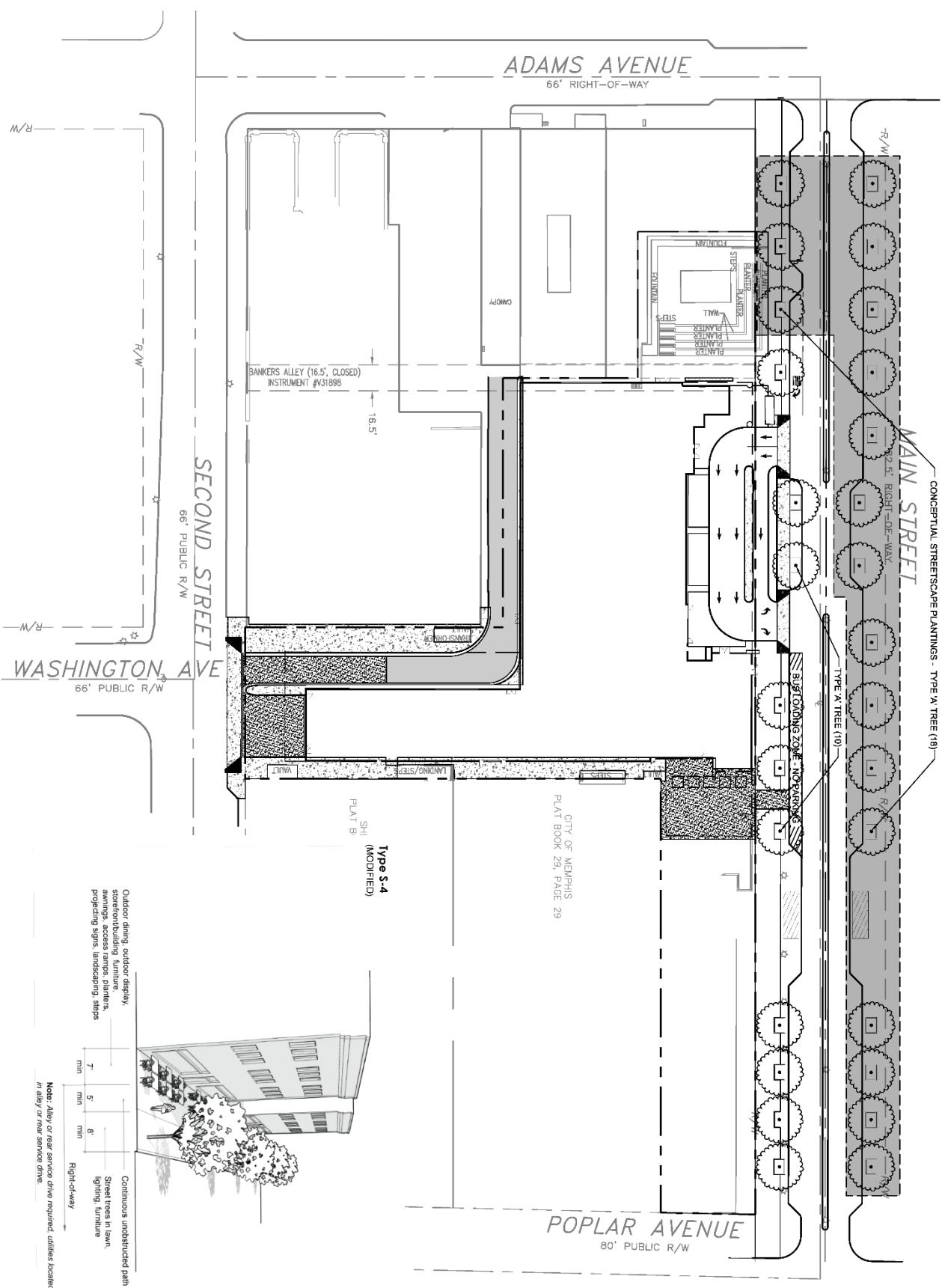
## SITE PLAN – ZOOMED



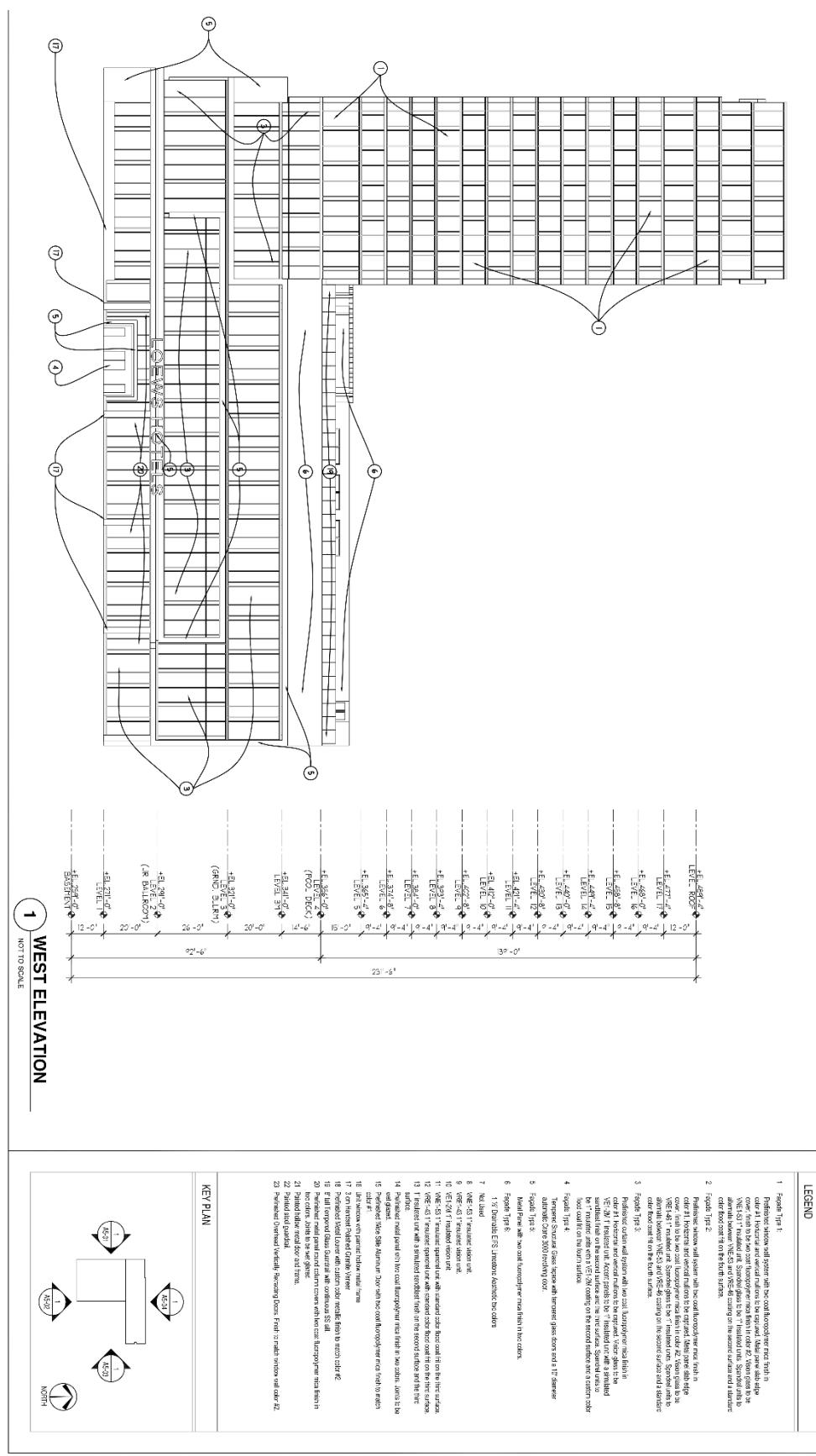
## LANDSCAPE PLAN

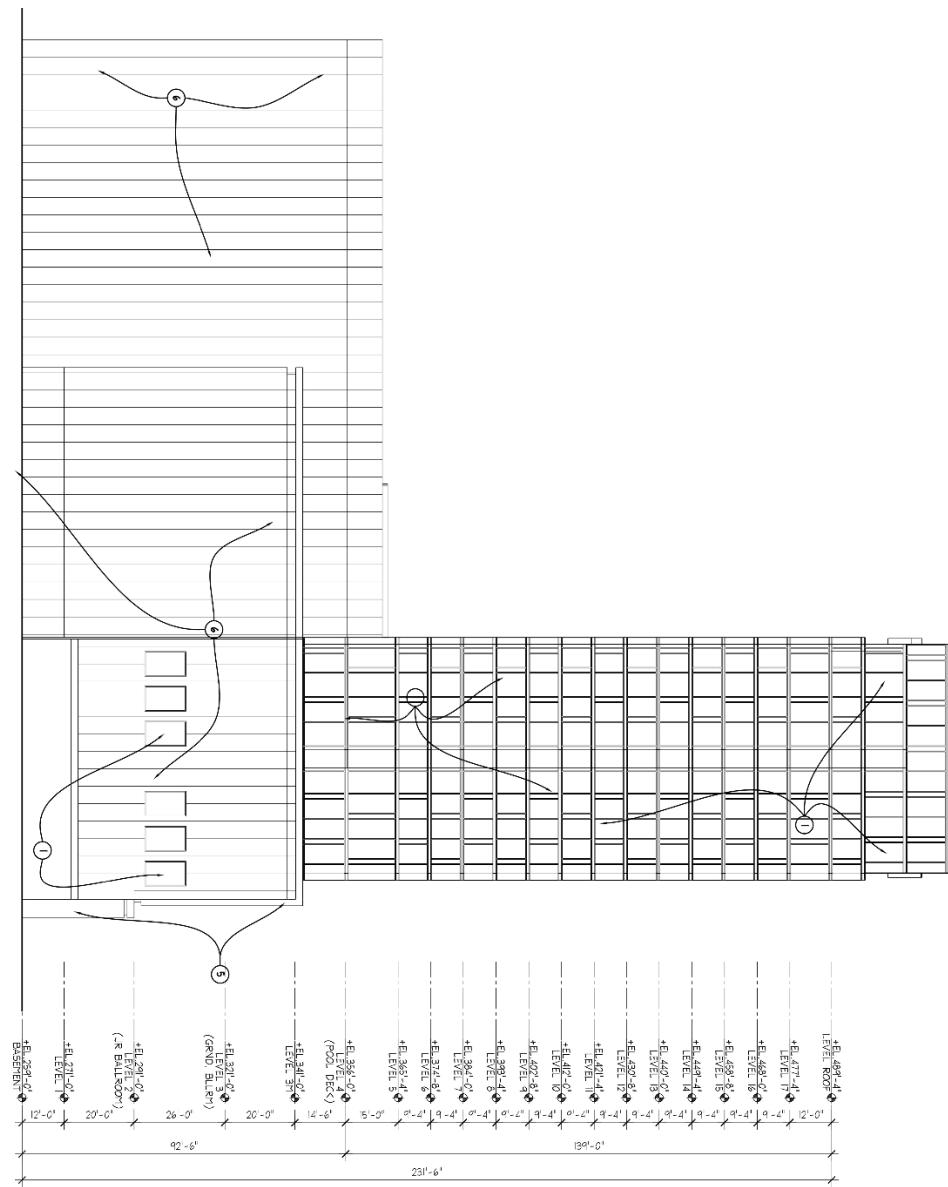


## LANDSCAPE PLAN – ZOOMED



## ELEVATIONS



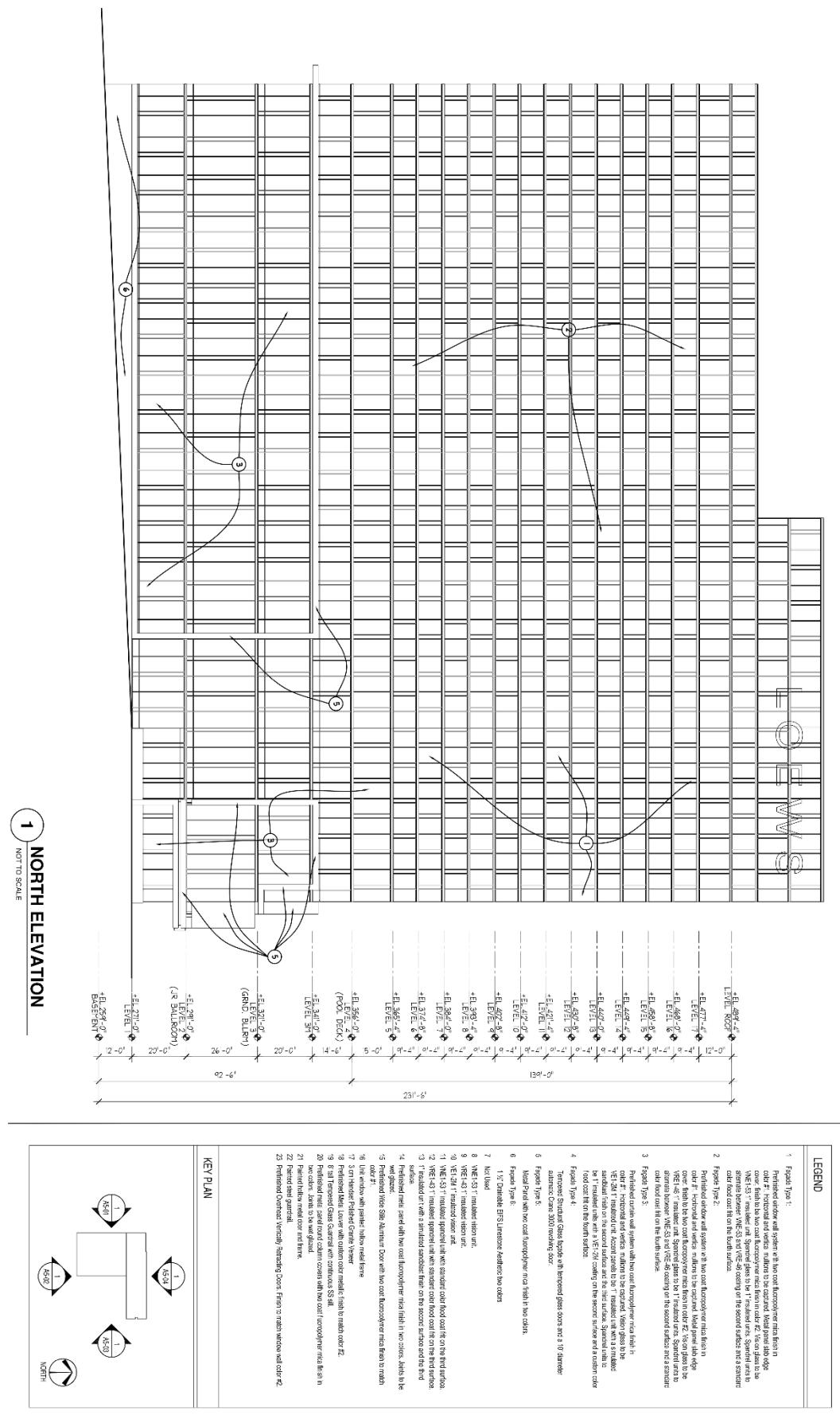


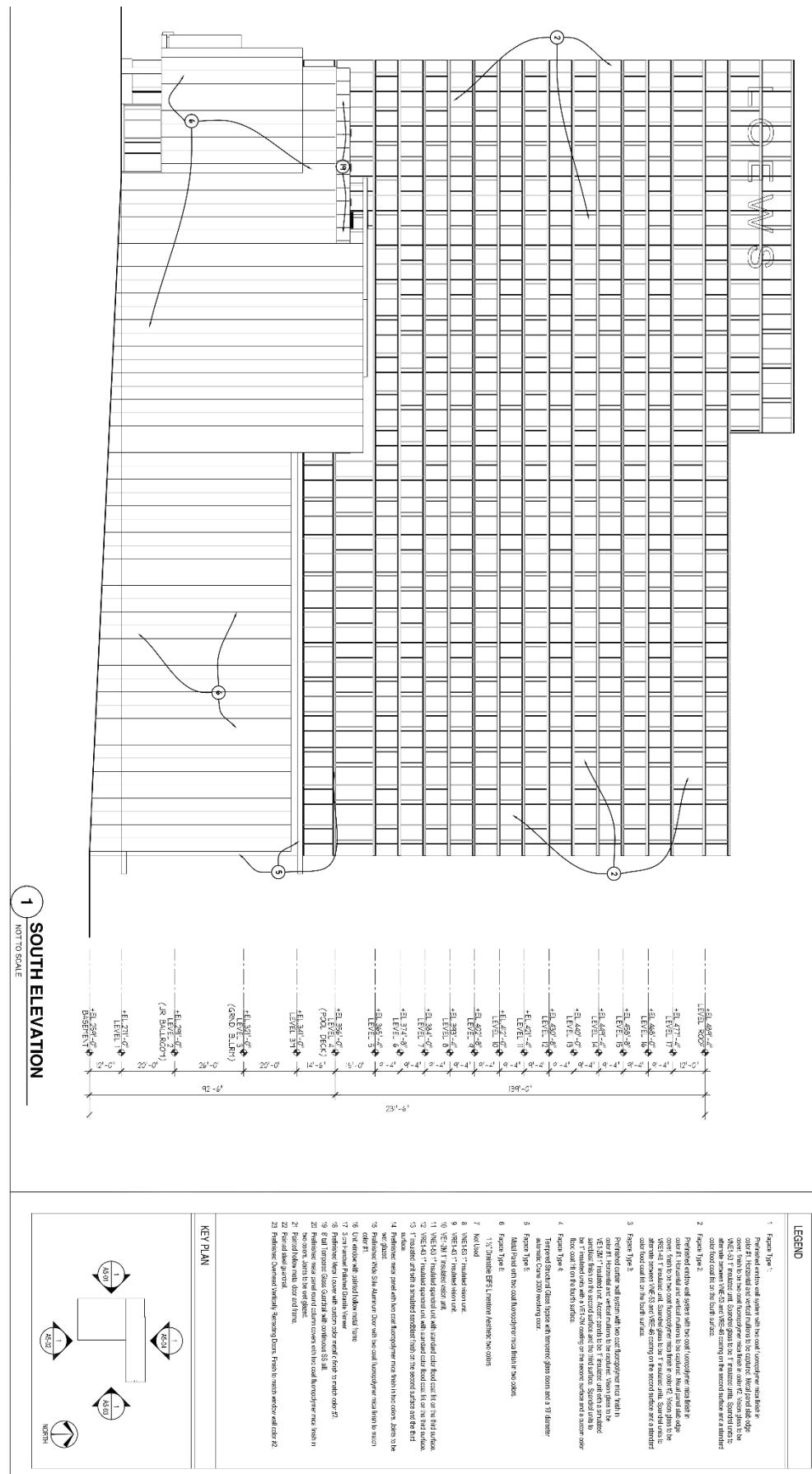
**1**  
NOT TO SCALE  
**EAST ELEVATION**

EAST ELEVATION			
LOEWS HOTEL			
CASE # <u>xx-xxxx</u>			
MEMPHIS, TENNESSEE			
NO. OF LOTS:	7	ACREAGE:	1.574
PARCEL NUMBER:	020210 0002 00210001 0002 002111 00002 002111 00006 002111 0001C		
ZONING:	CBD		
DEVELOPER:	MEPHIS HOTEL VENTURE LLC KIMLEY-FORIN & ASSOCIATES, INC.		
100' FLOOR LAY:	FEMA MAP NAME: LUMBER FEMA LUMBER DATE: SEPTEMBER 28, 2007		
DATE:	SEPTEMBER 3, 2019		
SCALE:	1" = 50'		
SHEET 6 OF 10			

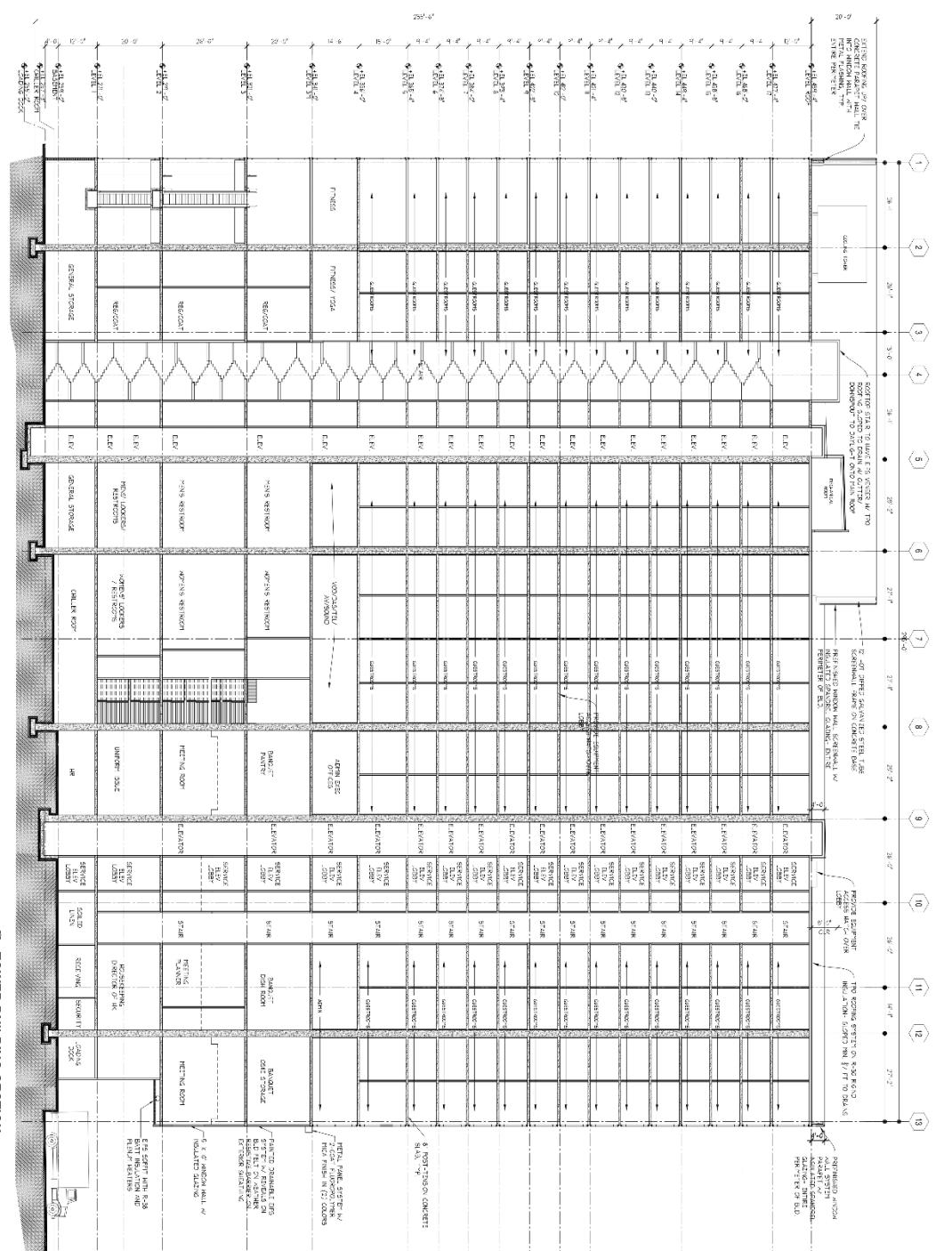
19

## LEGEND





## BUILDING SECTIONS

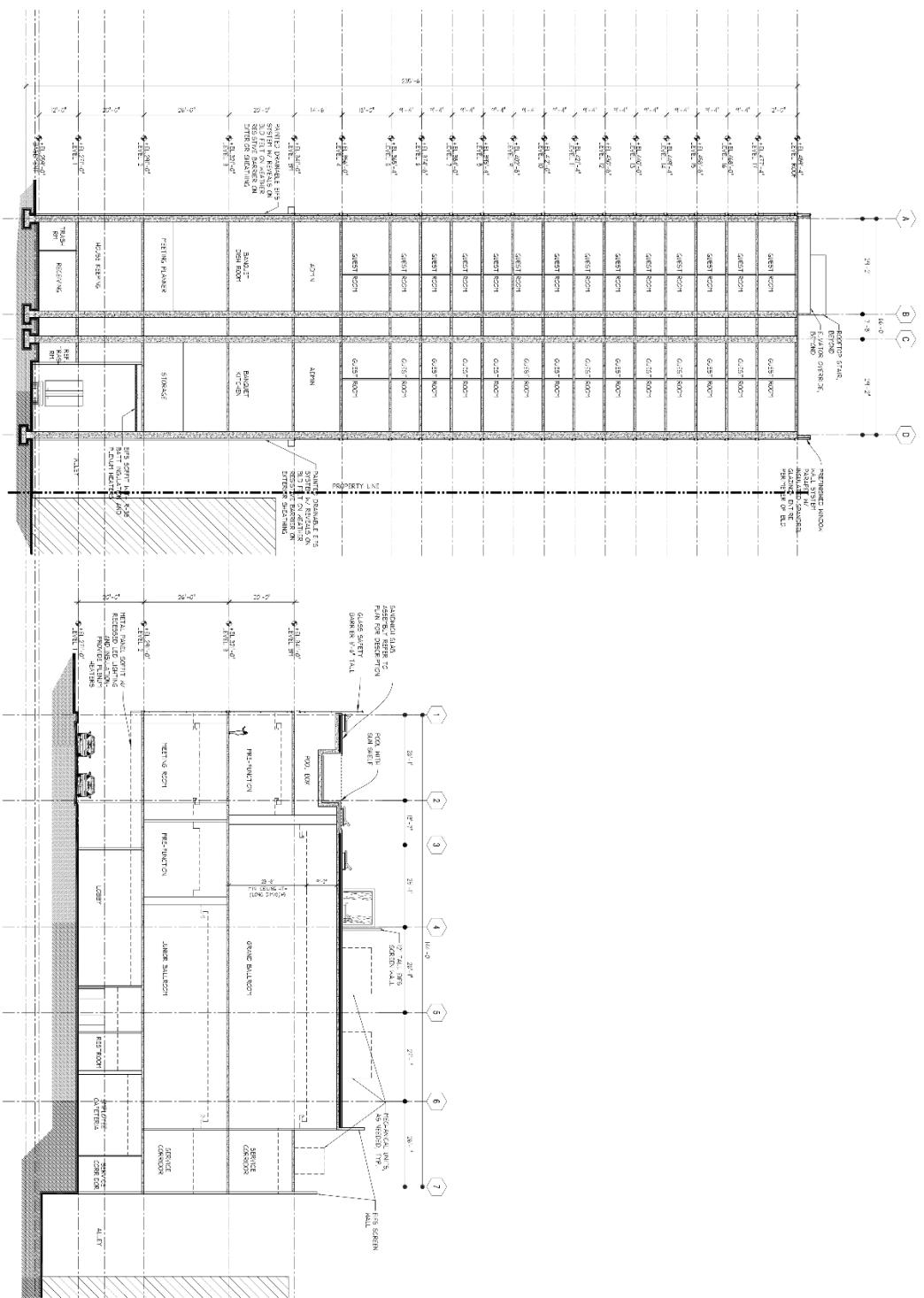


① BALLROOM BUILDING SECTION

② TOWER BUILDING SECTION

NOT TO SCALE

NOT TO SCALE





## COLORIZED RENDERINGS







## STAFF ANALYSIS

### Request

The application and letter of intent have been added to this report.

The request is for a hotel with +/-500 rooms.

### Approval Criteria

Staff agrees the approval criteria in regard special use permits as set out in the Unified Development Code Section 9.6.9 are met.

#### 9.6.9 Approval Criteria

*No special use permit or planned development shall be approved unless the following findings are made concerning the application:*

- 9.6.9A *The project will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety, and general welfare.*
- 9.6.9B *The project will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not interfere with the development and use of adjacent property in accordance with the applicable district regulations.*
- 9.6.9C *The project will be served adequately by essential public facilities and services such as streets, parking, drainage, refuse disposal, fire protection and emergency services, water and sewers; or that the applicant will provide adequately for such services.*
- 9.6.9D *The project will not result in the destruction, loss or damage of any feature determined by the governing bodies to be of significant natural, scenic or historic importance.*
- 9.6.9E *The project complies with all additional standards imposed on it by any particular provisions authorizing such use.*
- 9.6.9F *The request will not adversely affect any plans to be considered (see Chapter 1.9), or violate the character of existing standards for development of the adjacent properties.*
- 9.6.9G *The governing bodies may impose conditions to minimize adverse effects on the neighborhood or on public facilities, and to insure compatibility of the proposed development with surrounding properties, uses, and the purpose and intent of this development code.*
- 9.6.9H *Any decision to deny a special use permit request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record, per the Telecommunications Act of 1996, 47 USC 332(c)(7)(B)(iii). The review body may not take into account any environmental or health concerns.*

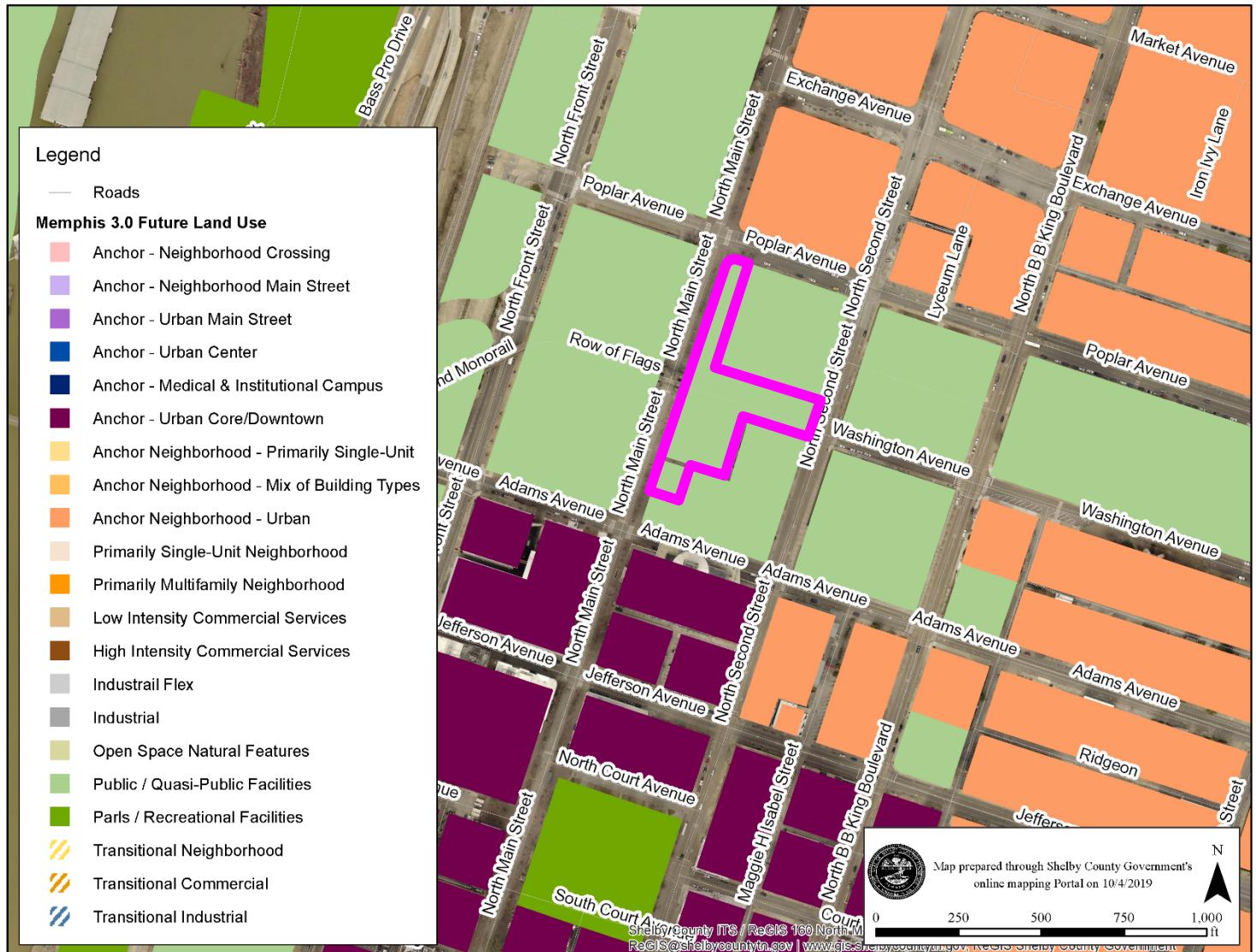
### Site Description

The subject property is +/-91857 acres and compromised of seven parcels (002010 00002, 002011 00001, 002011 00002, 002011 00003, 002011 00004, 002011 00005, and 002011 00006), located on the eastside of North Main Street within the block bounded by Adams Avenue, Poplar Avenue, and North Second Street in downtown Memphis, and zoned Central Business District (CBD). Per the Assessor's Office, the subject property is currently deemed recreation/open space as the parcels are generally all within Civic Center Plaza. The Assessor's parcel map it shows a north-south alley (North November 6th Street) and an east-west alley (Alley 7-B or Bankers Alley) as both being open public right-of-way. However, the City of Memphis Mapping and Central Records has provided documents that show both of these alleys having been closed previously. The north-south alley as part of an ordinance dating back to May 25, 1910, and the east-west alley as part of a resolution dating back to May 26, 1964, see pages 35-45 of this report.

### Consistency with Memphis 3.0

Staff uses the following criteria contained in Memphis 3.0 to determine consistency.

1. *The future land use planning map:* The subject site is identified as Public & Quasi-Public Buildings & Uses in the future land use planning map.



2. *The land use category descriptions and graphic portrayals, including whether the proposed use is compatible with the zone districts listed in the zoning notes and the proposed building(s) fit the listed form and location characteristics:* The request for a hotel does not meet this criterion because the proposed development is not an institutional or recreational use. However, the site is adjacent to the Urban Core/Downtown Anchor which envisions safe, walkable neighborhoods with thriving mixed-use centers, active public spaces, and strong connection between anchors and neighborhoods while also promoting and encouraging growth and density by improving underutilized land for development and ensuring quality architecture and design that promotes beautiful buildings, streets, and public realm among others. This proposed development would contribute to each of the categories by adding to the mix of uses in the area and further contributing to the activation of the immediate area while conveying high-quality

architecture and design.

3. *Existing, adjacent land uses and zoning:* The subject site is surrounded by the following land uses: institutional, office, and recreation. The subject site is surrounded by the following zoning districts: Central Business District. This requested land use is compatible with these adjacent land uses and zoning districts as the Central Business District encourages a mix of uses and specifically lists visitor accommodations in the district intent statement. Furthermore, the sites proximity to the convention center cannot be understated.
4. *The degree of change map:* The subject site is identified as accelerate in the degree of change map.
5. *The degree of change descriptions:* The request for a hotel meets this criterion as the general accelerate description includes such items as increasing density, mix of uses, speed up development activity, attract retail and service uses that cater to larger-scale markets, promote pedestrian-oriented infill development, reduce building setbacks or establish build-to lines, etc. These items and others are met by the hotel use as the proposed hotel is upscale in nature and will cater to convention center activities while increasing density and contribute to greater development activity while being constructed in a pedestrian friendly manner that is built up to the street while further generating pedestrian activity.

This proposal is consistent with the Memphis 3.0 General Plan as it will serve to activate the immediate area with greater pedestrian activity; promote high-quality architecture and design; improve underutilized land for development while promoting high-quality architecture and design, increase the mix of uses, speed up development activity, bring a hotel brand that caters to larger-scale markets, etc.; and the hotels proximity to the Memphis Cook Convention Center and intent to cater to this regional institutional asset should also be acknowledged.

### **Conclusions**

The applicant is seeking the approval of a special use permit to allow a hotel of 17 stories in height with a capacity of +/-500 rooms.

The proposed hotel is primarily intended to serve the regional institutional asset of the Memphis Cook Convention Center. The convention center is currently undergoing significant renovations to modernize the complex with a high-quality design aesthetic in mind while adding square footage and other amenities to establish a blue-ribbon facility. However, a successful convention center requires a sufficient hotel package to support it. The proposed hotel of this development would not only add to that package, but would be the second nearest large hotel to the convention center and third closest overall while remaining within a walkable distance thereby adding a high-quality product with significant influx of hotel room capacity given the +/-500 rooms slated for construction.

This development will additionally make use of underutilized land while promoting infill development, mixed use, high-quality architecture and design, increased tourism and pedestrian activity, and further promote the vision of the Memphis 3.0 General Plan for the Core City.

As proposed, the conditions include the requirement of public pedestrian easements in order to maintain the connection between North Main Street, the City of Memphis Donnelley J. Hill Public Safety Building property, the Vasco A. Smith, Jr. County Administration Building, and North Second Street in a similar manner that exists today. Additionally, there is a requirement to remove the extra drive aisle from the North Main Street public right-of-way and redesign this area in a more pedestrian friendly manner.

This project will not have a substantial or undue adverse effect upon adjacent property, the character of the

neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety, and general welfare.

## **RECOMMENDATION**

Staff recommends approval with conditions.

### **Conditions**

1. A final site plan shall be submitted for administrative review and approval by the Office of Planning and Development.
2. A public pedestrian easement through the subject property connecting North Main Street to the City of Memphis Donnelley J. Hill Public Safety Building property must be provided.
3. A public pedestrian easement that connects the “Landing/Steps” adjacent to the southern property line of the Vasco A. Smith, Jr. County Administration Building and North Second Street must be provided.
4. The north-south drive aisle in the North Main Street public right-of-way shall be removed. This area shall be redesigned to accommodate pedestrians.
5. If it is determined that any public right-of-way within the subject property is open the applicant must close said right-of-way.

## **DEPARTMENTAL COMMENTS**

The following comments were provided by agencies to which this application was referred:

### **City/County Engineer:**

1. Standard Subdivision Contract or Street Cut Permit as required in Section 5.5.5 of the Unified Development Code.

### **Sewers:**

2. City sanitary sewers are available at developer's expense.
3. All sewer connections must be designed and installed by the developer. This service is no longer offered by the Public Works Division.

### **Roads:**

4. The Developer shall be responsible for the repair and/or replacement of all existing curb and gutter along the frontage of this site as necessary.
5. All existing sidewalks and curb openings along the frontage of this site shall be inspected for ADA compliance. The developer shall be responsible for any reconstruction or repair necessary to meet City standards,

### **Traffic Control Provisions:**

6. The developer shall provide a traffic control plan to the city engineer that shows the phasing for each street frontage during demolition and construction of curb gutter and sidewalk. Upon completion of sidewalk and curb and gutter improvements, a minimum 5-foot-wide pedestrian pathway shall be provided throughout the remainder of the project. In the event that the existing right of way width does not allow for a 5-foot clear pedestrian path, an exception may be considered.
7. Any closure of the right of way shall be time limited to the active demolition and construction of sidewalks and curb and gutter. Continuous unwarranted closure of the right of way shall not be allowed for the duration of the project. The developer shall provide on the traffic control plan, the time needed per phase to complete that portion of the work. Time limits will begin on the day of closure and will be monitored by the Engineering construction inspectors on the job.
8. The developer's engineer shall submit a Trip Generation Report that documents the proposed land use, scope and anticipated traffic demand associated with the proposed development. A detailed Traffic Impact Study will also be required. The required Traffic Impact Study will need to be formally approved by the City of Memphis, Traffic Engineering Department.

### **Curb Cuts/Access:**

9. The City Engineer shall approve the design, number and location of curb cuts.
10. Any existing nonconforming curb cuts shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.

### **Drainage:**

11. A grading and drainage plan for the site shall be submitted to the City Engineer for review and approval prior to recording of the final plat.

12. The developer should be aware of his obligation under 40 CFR 122.26(b)(14) and TCA 69-3-101 et. seq. to submit a Notice of Intent (NOI) to the Tennessee Division of Water Pollution Control to address the discharge of storm water associated with the clearing and grading activity on this site.

**Site Plan Notes:**

13. Provide internal circulation between adjacent phases, lots, and sections. Common ingress/egress easements shall be shown on the final plats.

**General Notes:**

14. The width of all existing off-street sewer easements shall be widened to meet current city standards.

15. No other utilities or services may occupy sanitary sewer easements in private drives and yards except for crossings.

16. All connections to the sewer shall be at manholes only.

17. Required landscaping shall not be placed on sewer or drainage easements.

**City/County Fire Division:** No comments received.

**City Real Estate:** No comments received.

**City/County Health Department:** No comments received.

**Shelby County Schools:** No comments received.

**Construction Code Enforcement:** No comments received.

**Memphis Light, Gas and Water:**

MLGW has reviewed the referenced application, and has no objection, subject to the following conditions:

- MLGW has existing utility distribution facilities within the present public road/alley right of way. The City of Memphis shall retain an easement across the proposed street closure, from edge to edge of the road right of way, to accommodate any existing public utilities, including electric, gas, water, CATV, telephone, sewer, drainage, etc.
- It is the responsibility of the owner/applicant to bear the cost if it is necessary for MLGW facilities to be installed, removed or relocated.
- MLGW reserves the right to retain a utility right-of-way within that portion of the existing public road right of way at all times for existing utilities, or the owner/applicant may choose to relocate existing utilities at the expense of the owner/applicant.
- MLGW must be able to access any overhead or underground facilities. Consequently, no permanent structure(s) shall be constructed or erected within that portion of the existing public road right of way including fences, buildings, patios, vehicle parking or paving.
- No permanent structures, development or improvements are allowed within any utility easements, without prior MLGW written approval.
- Underground Utility separation and clearance: The subject property is encumbered by existing utilities which may include overhead and underground facilities. It is the responsibility of the owner/applicant to maintain a minimum 3-foot (3') separation between any existing underground service lines or utilities and any proposed permanent structure or facility. This separation is necessary to provide sufficient space for any excavations to perform service, maintenance or replacement of existing utilities.
- If there are existing fire hydrants within the proposed closure of the public right-of-way, these hydrants will become public hydrants on private property, and the owner/applicant will be billed an annual maintenance fee on a monthly basis by MLGW.
- If there are existing street lights within the proposed closure of the public right-of-way, MLGW will remove all street lights, and abandon underground electric feeds or remove overhead electric feeds – at the expense

of the owner/applicant.

- It is the responsibility of the owner/applicant to identify any utility easements, whether dedicated or prescriptive (electric, gas, water, CATV, telephone, sewer, drainage, etc.), which may encumber the subject property, including underground and overhead facilities.
- No permanent structures, development or improvements are allowed within any utility easements, without prior MLGW written approval.
- It is the responsibility of the owner/applicant to comply with the National Electric Safety Code (NESC) and maintain minimum horizontal/vertical clearances between existing overhead electric facilities and any proposed structures.
- Underground Utility separation and clearance: The subject property is encumbered by existing utilities which may include overhead and underground facilities. It is the responsibility of the owner/applicant to maintain a minimum 3-foot (3') separation between any existing underground service lines or utilities and any proposed permanent structure or facility. This separation is necessary to provide sufficient space for any excavations to perform service, maintenance or replacement of existing utilities.
- It is the responsibility of the owner/applicant to pay the cost of any work performed by MLGW to install, remove or relocate any facilities to accommodate the proposed development.
- It is the responsibility of the owner/applicant to contact TN-1-CALL @ 1.800.351.1111, before digging, and to determine the location of any underground utilities including electric, gas, water, CATV, telephone, etc.
- It is the responsibility of the owner/applicant to comply with Memphis/Shelby County Zoning Ordinance - Landscape and Screening Regulations.
- Street Trees are prohibited, subject to the review and approval of the landscape plan by MLGW Engineering. It is the responsibility of the owner/applicant to submit a detailed landscape plan to MLGW Engineering.
- Landscaping is prohibited within any MLGW utility easement without prior MLGW approval.
- Street Names: It is the responsibility of the owner/applicant to contact MLGW–Address Assignment @ 729-8628 and submit proposed street names for review and approval. Please use the following link to the MLGW Land & Mapping website for Street Naming Guidelines and the Online Street Name Search: <http://www.mlgw.com/builders/landandmapping>
- It is the responsibility of the owner/applicant to submit a detailed plan to MLGW Engineering for the purposes of determining the impact on or conflict with any existing utilities, and the availability and capacity of existing utility services to serve any proposed or future development(s). Application for utility service is necessary before plats can be recorded.
  - All residential developers must contact MLGW's Residential Engineer at Builder Services: (901) 729-8675 to initiate the utility application process.
  - All commercial developers must contact MLGW's Builder Services line at 729-8630 (select option 2) to initiate the utility application process.
- It is the responsibility of the owner/applicant to pay the cost of any utility system improvements necessary to serve the proposed development with electric, gas or water utilities.

#### Land and Mapping-Address Assignment:

- STREET NAME SHOULD BE SHOWN AS “N MAIN ST”

#### Office of Sustainability and Resilience:

- No comment.

**NORTH-SOUTH ALLEY (NORTH NOVEMBER 6TH STREET) CLOSURE ORDINANCE**

ORDINANCE CLOSING THAT PART OF THE ALLEY BETWEEN ADAMS AND WASHINGTON STREETS WHICH LIES BETWEEN SECOND STREET, AND THE FIRST ALLEY WEST OF SECOND STREET.

.....

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MEMPHIS, That for the purpose of erecting thereon a Police Station and Fire Engine House for the use of the City of Memphis, that so much of the alley running parallel to and between Adams and Washington Avenue, as lies between Second Street, and the East line of the first alley West of Second Street, is hereby forever closed and the public use of the same as an alley relinquished and abandoned.

BE IT FURTHER ORDAINED, That this ordinance take effect from and after its passage, the matter being one of necessity and urgency, and the public welfare requiring it.

1<sup>st</sup> May 19-10  
2<sup>nd</sup> 24-10.  
3<sup>rd</sup> 25-10

Passed first reading by the Board of Commissioners of the City of Memphis, on the 19 day of May 1910 and second reading by the Board of Commissioners on the 24 day of May 1910 and third and final reading by the Board of Commissioners on the 25 day of May 1910

Mayor.

APPROVED

MAYOR

ATTEST

Emmie M. Douglas

CITY CLERK

1<sup>st</sup> R. <sup>3R</sup>  
May 19-10  
2<sup>nd</sup> R. <sup>3R</sup>  
May 24-10

ORDINANCE PROVIDING FOR THE ISSUE OF  
POLICE STATION BONDS.

AN ORDINANCE PROVIDING FOR THE ISSUE OF POLICE  
STATION BONDS IN THE SUM OF \$260,000.00, UNDER THE PROVISIONS  
OF CHAPTER 356 OF THE ACTS OF THE GENERAL ASSEMBLY OF THE  
STATE OF TENNESSEE, APPROVED APRIL 30th, 1909.

SECTION 1:

BE IT ORDAINED by the Board of Commissioners of the  
City of Memphis, by virtue of the power vested in them by Chap-  
ter 356 of the Acts of the General Assembly of the State of  
Tennessee, approved April 30th, 1909, that for the purpose  
of building a police station in the city of Memphis, and for  
the purpose of erecting a new fire engine house, and tearing  
down an old one, (the said Police Station Bulding Commission  
having determined to build said new fire engine house, and  
tear down an old one), and of providing funds for such pur-  
poses, the City of Memphis hereby issues and authorizes the  
issuance of Two-Hundred and Sixty Thousand (\$260,000.00)  
Dollars of bonds of the tenor and effect as provided in said  
Act; said bonds shall bear date the 1<sup>st</sup> day of  
July 1910, and shall be payable on the 1<sup>st</sup>  
day of July 1950, and shall bear interest at the  
rate of four and one-half (4-1/2) per cent per annum. The  
bonds and coupons shall be payable at the office of the United  
States Mortgage & Trust Company, in the City of New York and  
state of New York, or at the Mayor's office in the city of  
Memphis, Tennessee, at the option of the holder.

**SECTION 2:**

**BE IT FURTHER ORDAINED,** that the City of Memphis hereby pledges its full faith and credit for the payment of the principal and interest of the bonds herein authorized according to their tenor, and obligates itself in addition to all the taxes authorized by law, to levy a tax to pay said bonds and coupons at their maturity.

**SECTION 3:**

**BE IT FURTHER ORDAINED,** that this Ordinance take effect 30 days after its passage, the public welfare requiring it.

Passed first reading by the Board of Commissioners of the City of Memphis, on the 19 day of May 1910, and second reading by the Board of Commissioners on the 24 day of May 1910, and third and final reading by the Board of Commissioners on the 25 day of May 1910.

Mayor.

APPROVED

Mayor.

ATTEST  
Ennis, M. Douglas  
CITY CLERK

**EAST-WEST ALLEY (ALLEY 7-B) CLOSURE RESOLUTION**

**R E S O L U T I O N**

WHEREAS, all the owners of the properties abutting upon the hereinafter described streets, alleys and easements have petitioned the Mayor and Board of Commissioners of the City of Memphis to officially close said streets and alleys, and to release said easements; and,

WHEREAS, there is no longer a need for public use of the streets, alleys and easements hereinafter described as follows:

An easement for public utilities "over and across the east 12.375 feet of said parcel" which was created by reference in a warranty deed recorded in Book 3400, at Page 611, of the Register's Office of Shelby County, Tennessee.

The following streets and alleys in Memphis, Shelby County, Tennessee:

Thompson  
Rena  
Requers  
Plan  
Meier  
Byrd  
Tel  
Meyers  
Zabot  
Fireman  
Carona  
Jernough  
Sied

46

DESCRIPTION OF STREETS AND ALLEYS TO BE CLOSED  
IN  
PROJECT 1, COURT AVENUE URBAN RENEWAL AREA; TENN. R-37

1. ALLEY "1-A" - FROM NORTH SECOND STREET EASTWARDLY 148.5 FEET

Beginning at a point in the east line of Second Street, said point being the point of intersection of the east line of Second Street and the north line of the first alley south of Winchester Avenue; thence eastwardly with the north line of said alley a distance of 148.5 feet more or less to the east line of said alley; thence southwardly with the east line of said alley a distance of 18.7 feet more or less to the south line of said alley; thence westwardly with said south line a distance of 148.5 feet more or less to the east line of Second Street; thence northwardly with the east line of Second Street a distance of 18.7 feet more or less to the point of beginning.

2. ALLEY "1-B" - FROM THIRD STREET WESTWARDLY A DISTANCE OF 148.5 FEET

Beginning at a point in the west line of Third Street, said point being the point of intersection of the west line of Third Street and the north line of the first alley south of Winchester Avenue; thence southwardly with the west line of Third Street a distance of 19.5 feet more or less to the south line of said alley; thence westwardly with said south line a distance of 148.5 feet more or less to the west line of said alley; thence northwardly with the west line of said alley a distance of 19.5 feet more or less to the north line of said alley; thence eastwardly with the north line of said alley a distance of 148.5 feet more or less to the point of beginning.

3. ALLEY "2-A" - (NOVEMBER 6th STREET) - FROM WINCHESTER AVENUE TO MARKET AVENUE

Beginning at a point in the south line of Winchester Avenue, said point being the point of intersection of the south line of Winchester Avenue and the west line of the first alley east of Main Street; thence eastwardly with the south line of Winchester Avenue a distance of 26.0 feet more or less to the east line of said alley; thence southwardly with said east line a distance of 314.3 feet more or less to the north line of Market Avenue; thence westwardly with the north line of Market Avenue a distance of 26.1 feet more or less to the west line of Alley "2-A"; thence northwardly with the west line of said alley a distance of 314.8 feet more or less to the point of beginning.

4. ALLEY "2-B" - FROM MAIN STREET TO ALLEY "2-A"

Beginning at a point in the east line of Main Street, said point being the point of intersection of the east line of Main Street and the north line of the first alley south of Winchester Avenue; thence eastwardly with the north line of said alley a distance of 148.90 feet more or less to the west line of Alley "2-A"; thence southwardly with the west line of said alley a distance of 17.6 feet more or less to the south line of Alley "2-B"; thence westwardly with the south line of Alley "2-B" a distance of 148.50 feet more or less to the east line of Main Street; thence northwardly with said east line a distance of 17.6 feet more or less to the point of beginning.

5. ALLEY "3-A" (NOVEMBER 6th STREET) - FROM MARKET AVENUE TO EXCHANGE AVENUE

Beginning at a point in the south line of Market Avenue, said point being the point of intersection of the south line of Market Avenue and the west line of the first alley east of Main Street; thence eastwardly with the south line of Market Avenue a distance of 26.2 feet more or less to the east line of Alley "3-A" (November 6th Street); thence southwardly with said east line a distance of 316.70 feet more or less to the north line of Exchange Avenue; thence westwardly with the north line of Exchange Avenue a distance of 25.3 feet more or less to the west line of Alley "3-A" (November 6th Street); thence northwardly with the west line of said alley a distance of 315.42 feet more or less to the point of beginning.

6. ALLEY "3-B" - FROM MAIN STREET TO SECOND STREET

Beginning at a point in the east line of Main Street, said point being the point of intersection of the east line of Main Street and the north line of the first alley south of Market Avenue; thence eastwardly with the north line of said alley a distance of 322.7 feet more or less to the west line of Second Street; thence southwardly with the west line of Second Street a distance of 18.6 feet more or less to the south line of said alley; thence westwardly with the south line of said alley a distance of 323.8 feet more or less to the east line of Main Street; thence northwardly with the east line of Main Street a distance of 17.9 feet more or less to the point of beginning.

7. ALLEY "4-A" - (NOVEMBER 6th STREET) EXCHANGE AVENUE TO POPLAR AVENUE

Beginning at a point in the south line of Exchange Avenue, said point being the point of intersection of the south line of Exchange Avenue and the west line of the first alley east of Main Street; thence eastwardly with the south line of Exchange Avenue a distance of 25.7 feet more or less to the east line of Alley "4-A" (November 6th Street); thence southwardly with said east line a distance of 314.0 feet more or less to the north line of Poplar Avenue; thence westwardly with the north line of Poplar Avenue a distance of 25.6 feet more or less to the west line of Alley "4-A" (November 6th Street); thence northwardly with the west line of said alley a distance of 315.8 feet more or less to the point of beginning.

8. ALLEY "4-B" - FROM MAIN STREET TO SECOND STREET

Beginning at a point in the east line of Main Street, said point being the point of intersection of the east line of Main Street and the north line of the first alley south of Exchange Avenue; thence eastwardly with the north line of said alley a distance of 322.6 feet more or less to the west line of Second Street; thence southwardly with the west line of Second Street a distance of 17.0 feet more or less to the south line of said alley; thence westwardly with the south line of Alley "4-B" a distance of 323.4 feet more or less to the east line of Main Street; thence northwardly with the east line of Main Street a distance of 17.0 feet more or less to the point of beginning.

9. ALLEY "5-A" (NOVEMBER 6th STREET) - FROM POPLAR AVENUE TO WASHINGTON AVENUE

Beginning at a point in the south line of Poplar Avenue, said point being the intersection point of the south line of Poplar Avenue and the west line of the first alley east of Main Street; thence eastwardly with the south line of Poplar Avenue a distance of 26.5 feet more or less to the east line of Alley "5-A"; thence southwardly with the east line of said alley a distance of 314.8 feet more or less to the north line of Washington Avenue; thence westwardly with the north line of Washington Avenue a distance of 26.6 feet more or less to the west line of Alley "5-A"; thence northwardly with the west line of said alley a distance of 313.8 feet more or less to the point of beginning.

10. ALLEY "5-B" - FROM MAIN STREET TO SECOND STREET

Beginning at a point in the east line of Main Street, said point being the point of intersection of the east line of Main Street and the north line of the first alley south of Poplar Avenue; thence eastwardly with the north line of said alley a distance of 323.50 feet more or less to the west line of Second Street; thence southwardly with the west line of Second Street a distance of 16.8 feet more or less to the south line of Alley "5-B"; thence westwardly with the south line of said alley a distance of 323.5 feet more or less to the east line of Main Street; thence northwardly with the east line of Main Street a distance of 16.8 feet more or less to the point of beginning.

11. ALLEY "7-B" - FROM MAIN STREET TO ALLEY "7-A"

Beginning at a point in the east line of Main Street, said point being the point of intersection of the east line of Main Street and the south line of the first alley south of Washington Avenue; thence northwardly with the east line of Main Street a distance of 17.8 feet more or less to the north line of Alley "7-B"; thence eastwardly with the north line of said alley a distance of 148.5 feet more or less to the west line of Alley "7-A"; thence southwardly with the west line of Alley "7-A" a distance of 17.8 feet more or less to the south line of Alley "7-B"; thence westwardly with the south line of said alley a distance of 148.5 feet more or less to the point of beginning.

12. ALLEY "8-A" - FROM EXCHANGE AVENUE TO ALLEY "8-B"

Beginning at a point in the south line of Exchange Avenue, said point being the point of intersection of the south line of Exchange Avenue and the west line of the first alley east of Second Street; thence eastwardly with the south line of Exchange Avenue a distance of 24.75 feet more or less to the east line of Alley "8-A"; thence southwardly with the east line of said alley a distance of 148.5 feet more or less to the north line (projected) of Alley "8-B"; thence westwardly with said line a distance of 24.75 feet more or less to the west line of Alley "8-A"; thence northwardly with said west line a distance of 148.5 feet more or less to the point of beginning.

13. ALLEY "8-B" - FROM THIRD STREET TO ALLEY "8-A"

Beginning at a point in the west line of Third Street, said point being the point of intersection of the west line of Third Street and the north line of the first alley south of Exchange Avenue; thence southwardly with the west line of Third Street a distance of 16.5 feet more or less to the south line of Alley "8-B"; thence westwardly with the south line of said alley a distance of 148.5 feet more or less to the east line of Alley "8-A"; thence northwardly with the east line of Alley "8-A" a distance of 16.5 feet more or less to the north line of Alley "8-B"; thence eastwardly with the north line of Alley "8-B" a distance of 148.5 feet more or less to the point of beginning.

14. ALLEY "9-A" - FROM EXCHANGE AVENUE TO MARKET AVENUE

Beginning at a point in the north line of Exchange Avenue, said point being the point of intersection of the north line of Exchange Avenue and the west line of the first alley east of Second Street; thence northwardly with said west line a distance of 315.8 feet more or less to the south line of Market Avenue; thence eastwardly with the south line of Market Avenue a distance of 27.2 feet more or less to the east line of Alley "9-A"; thence southwardly with the east line of said alley a distance of 315.8 feet more or less to the north line of Exchange Avenue; thence westwardly with the north line of Exchange Avenue a distance of 27.2 feet to the point of beginning.

15. ALLEY "9-B" - FROM SECOND STREET TO THIRD STREET

Beginning at a point in the east line of Second Street, said point being the point of intersection of the east line of Second Street and the south line of the first alley north of Exchange Avenue; thence northwardly with said east line a distance of 18.7 feet more or less to the north line of Alley "9-B"; thence eastwardly with the north line of said alley a distance of 324.2 feet more or less to the west line of Third Street; thence southwardly with the west line of Third Street a distance of 18.9 feet more or less to the south line of Alley "9-B"; thence westwardly with said south line a distance of 324.2 feet more or less to the point of beginning.

16. WASHINGTON AVENUE - FROM MAIN STREET TO SECOND STREET

Beginning at a point in the east line of Main Street, said point being the point of intersection of the east line of Main Street and the north line of Washington Avenue; thence eastwardly with the north line of Washington Avenue a distance of 323.6 feet more or less to the west line of Second Street; thence southwardly with the west line of Second Street a distance of 66 feet more or less to the south line of Washington Avenue; thence westwardly with the south line of Washington Avenue a distance of 321.8 feet more or less to the east line of Main Street; thence northwardly with the east line of Main Street a distance of 66 feet more or less to the point of beginning.

NOW, THEREFORE, BE IT RESOLVED that the above streets, alleys and portions of streets and alleys be and hereby are closed for public use;

BE IT FURTHER RESOLVED that the above described easement be and it hereby is released;

BE IT FURTHER RESOLVED that the proper officials of the City of Memphis be and they hereby are authorized to execute quit claim deeds to the owners of properties abutting upon the above streets, alleys and easements, reserving, where necessary, easements in such streets and alleys for public utilities and sewers;

BE IT FURTHER RESOLVED that a copy of this Resolution be sent to Memphis Abstract Company and Kansas City Title Company, Mid-South Title Company, Memphis Title Company and the City and County Tax Assessors.

I hereby certify that the foregoing is a true copy and said document was presented to the Board of Commissioners of the City of Memphis in regular or special session on the

MAY 26, 1964

Comptroller

## APPLICATION



# Memphis and Shelby County Office of Planning and Development

CITY HALL 125 NORTH MAIN STREET-SUITE 468 MEMPHIS, TENNESSEE 38103-2084 (901) 576-6601

## APPLICATION FOR SPECIAL USE PERMIT APPROVAL/AMENDMENT

Date: September 3, 2019

Case #: \_\_\_\_\_

PLEASE TYPE OR PRINT

Property Owner of Record: Jim Strickland, Mayor of Memphis Phone #: 901-636-6332

Mailing Address: 125 North Main Street, Room 700 City/State: Memphis, TN Zip 38103

Property Owner E-Mail Address: mayor@memphistn.gov

Applicant: Memphis Hotel Venture LLC Phone # 212-521-2612

Mailing Address: 667 Madison Ave City/State: New York, NY Zip 10065

Applicant E-Mail Address: constantine.dimas@loewshotels.com

Representative: Jarmon Peregoy, Kimley-Horn and Associates, Inc. Phone #: 901-374-9109

Mailing Address: 6750 Poplar Avenue, Suite 600 City/State: Memphis, TN Zip 38138

Representative E-Mail Address: jarmon.peregoy@kimley-horn.com

Engineer/Surveyor: Jarmon Peregoy, Kimley-Horn and Associates, Inc. Phone # 901-374-9109

Mailing Address: 6750 Poplar Avenue, Suite 600 City/State: Memphis, TN Zip 38138

Engineer/Surveyor E-Mail Address: jarmon.peregoy@kimley-horn.com

Street Address Location: Civic Center Plaza, North Main Street

Distance to nearest intersecting street: 191 feet from southwest property corner to centerline of Adams Avenue (66' R.O.W.)

Area in Acres:	Parcel 1, 2 1.051, 0.085 CBD, CBD Recreation, Recreation Hotel, Hotel	Parcel 3, 4 0.171, 0.065 CBD, CBD Recreation, Recreation Hotel, Hotel	Parcel 5, 6, 7 0.054, 0.054, 0.085 CBD, CBD, CBD Recreation, Recreation, Recreation Hotel, Hotel, Hotel
Existing Zoning:			

**Amendment(s):** Any revision to an approved Special Use Permit that does not meet the provisions for Major or Minor Modifications shall be proposed as an amendment. Time extensions (see Subsection 9.6.14B of the UDC) to and requests to exceed 24-month limitation on discontinuance (see Subsection 9.6.14C) of approved special use permits shall be processed as major modifications, subject to the provisions of Chapter 9.16.

Yes  No

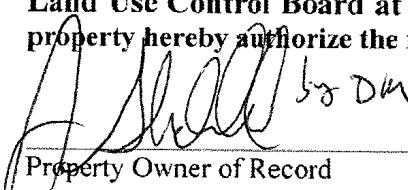
**Unincorporated Areas:** For residential projects in unincorporated Shelby County, please provide the following information:

Number of Residential Units: N/A Bedrooms: N/A

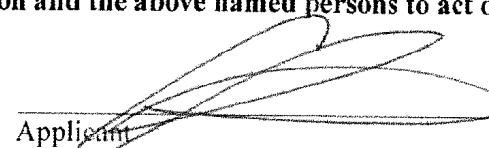
Expected Appraised Value per Unit: N/A or Total Project: N/A

**Variances:** If the Office of Planning and Development (OPD) determines your submitted site plan requires Board of Adjustment (BOA) action on a particular standard of the Unified Development Code, this application will not be heard by the Land Use Control Board (LUCB) until an application is submitted to the BOA. Once a BOA application is received by OPD, OPD will proceed to send any public notices, including neighborhood meeting notification, for the next available LUCB meeting. Notices will not be sent out prior to a BOA application being received. All neighborhood notification and public notices shall meet the timing provided in Sections 9.3.2 and 9.3.4 of the UDC. In lieu of a BOA application being filed, this application for a Special Use Permit may be replaced with an application for a Planned Development within 14 days of the filing deadline for this application, unless the site is located within the Medical Overlay District (see Sec. 8.2.2D of the UDC). If neither a Board of Adjustment nor a Planned Development application is received within 90 days of the filing deadline for this application, then this application shall be considered defective and withdrawn from any future consideration by the Land Use Control Board.

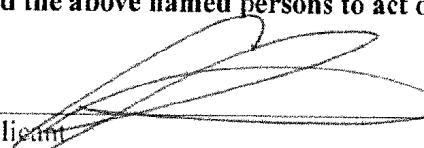
**I (we) hereby make application for the Special Use Permit described above and on the accompanying materials. I (we) accept responsibility for any errors or omissions which may result in the postponement of the application being reviewed by the Memphis & Shelby County Land Use Control Board at the next available hearing date. I (We), owner(s) of the above described property hereby authorize the filing of this application and the above named persons to act on my behalf.**

 by DM  
Property Owner of Record

Date

 Applicant

9/3/19  
Date

  
C.S. DIMAS  
DULY AUTHORIZED

#### REQUIREMENTS PRIOR TO APPLICATION SUBMISSION

**PRE-APPLICATION CONFERENCE** - Not more than six (6) months nor less than five (5) working days prior to filing an application, the applicant shall arrange for a mandatory pre-application conference with OPD.

Pre-Application Conference held on: 07/19/2019 with Josh Whitehead

**NEIGHBORHOOD MEETING** - At least ten (10) days, but not more than 120 days, prior to a hearing before the Land Use Control Board, the applicant shall provide an opportunity to discuss the proposal with representatives from neighborhoods adjacent to the development site (Section 9.3.2). The following documentation shall be provided to OPD to verify compliance with this requirement: A copy of the letter sent to neighborhood associations and abutting property owners and a copy of the mailing list used to send notice.

Neighborhood Meeting Requirement Met: Yes  Not yet   
(If yes, documentation must be included with application materials)

**SIGN POSTING** - A sign or signs shall be erected on-site no more than 30 days or less than 10 days prior to the date of the Land Use Control Board hearing. See Sub-Section 9.3.4C of the UDC for further details on sign posting.

#### **9.6.9 Special Use Permit Approval Criteria**

No special use permit or planned development shall be approved unless the following findings are made concerning the application:

Please address each sub-section below (Provide additional information on a separate sheet of paper if needed).

- The project will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety, and general welfare (UDC sub-section 9.6.9A).

The proposed hotel use will have a positive impact on the character of the neighborhood by supporting increased tourism and improving the safety of the area with more activity.

- The project will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not interfere with the development and use of adjacent property in accordance with the applicable district regulations (UDC sub-section 9.6.9B).

The proposed hotel will complement the surrounding area by providing downtown business patrons and other tourists with a convenient place to stay in the heart of the city. Its location on Main Street will encourage pedestrian activity and patronage of nearby destinations.

- The project will be served adequately by essential public facilities and services such as streets, parking, drainage, refuse disposal, fire protection and emergency services, water and sewers; or that the applicant will provide adequately for such services (UDC sub-section 9.6.9C).

As part of the City of Memphis Engineering approval process, the applicant will ensure the project is designed to be served adequately by public facilities, emergency services, and utilities. There are existing water, sewer, gas, and electric utilities in the public rights-of-way adjacent to the property that the project will request connection to.

- The project will not result in the destruction, loss or damage of any feature determined by the governing bodies to be of significant natural, scenic or historic importance (UDC sub-section 9.6.9D).

All necessary environmental and historical due diligence and permitting will be performed prior to the development of the subject property and as required by local, state, or federal agencies. All necessary actions will be taken as required by the permitting processes.

- The project complies with all additional standards imposed on it by any particular provisions authorizing such use (UDC sub-section 9.6.9E).

The applicant will ensure the project complies with all additional standards imposed by any particular provisions authorizing the proposed Hotel use.

- The request will not adversely affect any plans to be considered (see UDC Chapter 1.9) or violate the character of existing standards for development of the adjacent properties (UDC sub-section 9.6.9F).

The proposed use will not adversely affect the overall character of the area. Loews plans to develop the site with the spirit of Memphis at the forefront of design. The presence of a 4-star hotel in the heart of the city will greatly enhance the entire downtown area for residents, business patrons, surrounding employees, and tourists alike.

**LETTER OF INTENT**

# Kimley»Horn

September 3, 2019

Mr. Josh Whitehead, Director  
Memphis / Shelby County Office of Planning and Development  
City Hall, 125 North Main Street, Suite 468  
Memphis, Tennessee 38103

RE: Special Use Permit for Proposed Hotel Use  
1.57 Acre Property – Civic Center Plaza, North Main Street

Dear Mr. Whitehead:

On behalf of Loews Hotels and Co., we are pleased to submit the attached supporting documents and application for a Special Use Permit for a hotel use on the 1.57-acre property made up of the following seven parcels:

002010 00002	002011 00002	002011 00004	002011 00006
002011 00001	002011 00003	002011 00005	

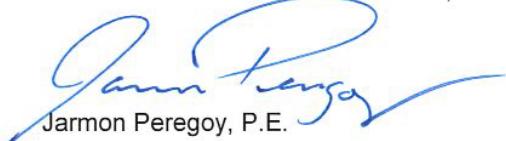
The project site is bound by N Main St to the west, N November St to the east, and the Downtown Memphis Commission to the south. All seven properties are zoned “CBD - Central Business” per the City of Memphis Zoning Atlas. In CBD, a hotel use requires a Special Use Permit per the Unified Development Code.

The proposed development will feature a convention center hotel with approximately 500 rooms as well as a restaurant, food and beverage areas, a pool/observation deck, and other amenities.

The existing property is being used as a public plaza with fountains and benches. The requested hotel use offers a more productive use of the property. The proposed development will accelerate growth and revitalization in the downtown area by supporting the local tourism industry and improving the surrounding streetscape.

Kimley-Horn is excited to work with Rule Joy Trammell + Rubio Architects and the developers, Inland Pacific Companies and Loews Hotel and Co., on this project. Please do not hesitate to contact our office with any questions.

Sincerely,  
KIMLEY-HORN AND ASSOCIATES, INC.



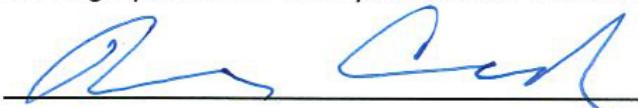
Jarmon Peregoy, P.E.

**SIGN AFFIDAVIT**

**AFFIDAVIT**

*Shelby County  
State of Tennessee*

I, Ransom Creech, being duly sworn, depose and say that at 4 am/pm on the 26th day of September, 2019 ~~Signs Now~~ posted 3 Public Notice Sign(s) pertaining to Case No. SUP 19-33 at the Civic Center Plaza near N 2nd St, N Main St, & Poplar Ave, providing notice of a Public Hearing before the ✓ Land Use Control Board, Memphis City Council, Shelby County Board of Commissioners for consideration of a proposed Land Use Action (Planned Development, ✓ Special Use Permit, Zoning District Map Amendment, Street and/or Alley Closure), a photograph of said sign(s) being attached hereon and a copy of the sign purchase receipt or rental contract attached hereto.



Owner, Applicant or Representative

9/30/19

Date

Subscribed and sworn to before me this 30<sup>th</sup> day of SEPTEMBER, 2019.

Dianne Alexander-Richey  
Notary Public

My commission expires: MARCH 31, 2022



**LETTERS RECEIVED**

One letter of opposition was received at the time of completion of this report and has subsequently been attached.

**MARTIN, TATE, MORROW & MARSTON, P.C.**

**ATTORNEYS AND COUNSELORS**

INTERNATIONAL PLACE, TOWER II  
SUITE 1000  
6410 POPLAR AVENUE

MEMPHIS, TENNESSEE 38119-4839

**J. LEWIS WARDLAW**  
[LWARDLAW@MARTINTATE.COM](mailto:LWARDLAW@MARTINTATE.COM)

TELEPHONE (901) 522-9000  
FAX (901) 527-3746

LICENSED IN TENNESSEE  
LICENSED IN ARKANSAS

October 1, 2019

**jeffrey.penzes@memphistn.gov**  
**josh.whitehead@memphistn.gov**

Mr. Jeffrey Penzes  
Memphis and Shelby County Office of  
Planning and Development

RE: *Application for Special Use Permit / SUP 19-33 / Memphis Hotel Venture, LLC*

Mr. Penzes:

I represent Hotel Memphis, L.P. and Hotel Memphis Opco, L.P. (collectively, “Hotel Memphis”) in their opposition to Memphis Hotel Venture, LLC’s September 3, 2019 Application for Special Use Permit approval. We have received a Notice of Public Hearing that the matter is set for a hearing before the Land Use Control Board (“LUCB”) on October 10, 2019. Hotel Memphis, L.P. owns and Hotel Memphis Opco, L.P. operates the Sheraton Hotel in near vicinity to the proposed project and oppose the nature and scope of the proposed development for the reasons set forth below. We ask that this letter of opposition be included in the official Staff Report and circulated to the LUCB members prior to the hearing.

The Process and Approval Criteria

The properties on which the special use permit is sought are within the Central Business District (the “CBD”). As such, the properties require a special use permit for “hotel” use. The mandatory criteria for approval of a special use permit are set forth in the Unified Development Code (“UDC”). Without each of the following affirmative findings, the requested special use permit cannot be legally granted:

No special use permit or planned development shall be approved unless the following findings are made concerning the application:

- A. The project will not have a **substantial or undue adverse effect** upon **adjacent property**, the **character of the neighborhood**, traffic conditions, **parking**, utility facilities and other matters affecting the public health, safety, and general welfare.
- B. The project will be constructed, arranged and operated so as to be **compatible with the immediate vicinity** and **not interfere with the**

**development and use of adjacent property** in accordance with the applicable district regulations.

C. The project will be **served adequately by essential public facilities** and services such as **streets, parking**, drainage, refuse disposal, fire protection and emergency services, water and sewers; or that the applicant will provide adequately for such services.

D. The project **will not result in the destruction, loss or damage of any feature determined by the governing bodies to be of significant natural, scenic or historic importance.**

...  
(UDC 9.6.9) (Emphasis added).<sup>1</sup>

### The Opposition

#### *Ongoing Litigation*

Legal challenges to the overall development are pending in two separate Tennessee courts. A lawsuit filed in Shelby County Chancery Court is currently pending in the Tennessee Court of Appeals. A second case, filed in Davidson County Chancery Court, is set to begin trial on November 22, 2019.

The Shelby County case (Hotel Memphis, L.P. and Hotel Memphis Opco, L.P. v. City of Memphis and Memphis City Council / Chancery No. CH-18-1529-III / Tennessee Court of Appeals No. W2019-00585-COA-R3-CV) challenged the City Council's approval of an August 28, 2018 resolution (the "Resolution") through a Petition for Writ of Certiorari. In the Shelby County litigation, Hotel Memphis alleges that the City Council acted illegally, arbitrarily, and capriciously, and abused its discretion when it approved the Resolution because the City Council, among other things:

- illegally sought approval of the allocation of State sales and use taxes to the proposed project at a time when the TDZ Act, Tenn. Code Ann. § 7-88-106, prohibited using the State portion of sales and use taxes to finance the project;
- illegally levied a privilege tax on sales at the project on the first reading without following statutory requirements for enactment of a privilege tax;
- impermissibly approved a master plan supplement to the Tourism Development Zone application that did not exist at the time of its approval; and
- failed to conduct an evaluation of the economic feasibility of the taxpayer-financed project.

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<sup>1</sup> The Memphis City Council may also "impose reasonable conditions . . . not limited to, right-of-way or easement dedication; recreation, open space, landscaping or buffer provision; limits on scale, intensity, or hours of operation; and other reasonable restrictions." (UDC 9.6.10A).

Hotel Memphis's appeal of the Shelby County Chancery Court's ruling on these issues is currently pending before the Tennessee Court of Appeals.

The Davidson County case (Hotel Memphis, L.P. and Hotel Memphis Opc, L.P. v. State Building Commission, Executive Subcommittee of the State Building Commission, Department of Finance and Administration, City of Memphis, Downtown Memphis Commission, Loews Hotels Holding Corporation, and THM Memphis Acquisitions, LLC / Chancery No. CH-19-256-I) challenged the approval of the State Building Commission Executive Committee (the "SBC EC") of the project under the TDZ Act through a Petition for Writ of Certiorari. In the pending lawsuit, Hotel Memphis alleges that the approval is illegal, arbitrary, capricious, and an abuse of discretion because, among other things:

- The SBC EC granted its approval without considering economic feasibility of the taxpayer-financed project;
- The Resolution upon which the approval was based violated at least three statutes, and the Memphis City Council abused its discretion by failing to perform an economic feasibility analysis or reviewing a master plan supplement to the Tourism Development Zone application;
- The City improperly sought financing through the use of the State portion of the sales and use taxes in direct contravention of the TDZ Act;
- The request did not contain the required minority-owned business participation plan, and therefore the State Building Commission's approval of the modification was not authorized by the TDZ Act; and
- In approving the application, the Finance Department failed to consult with the Department of Economic and Community Development and the Department of Tourism.

Consideration by the LUCB is premature at this stage because of the issues raised in the pending litigation and raises the risk of having conflicting actions taken by separate branches of government. This matter should be removed from the LUCB's calendar until the legal proceedings have been concluded.

*The Proposed Permit Does Not Meet the Requirements.*

Among other requirements, the UDC mandates that "[n]o special use permit or planned development shall be approved" unless all of the enumerated criteria are met. (UDC 9.6.9). Here, we focus on the following criteria, which cannot be overcome by the applicant:

- The requested use will have a substantial and undue adverse effect on the adjacent property (UDC 9.8.6A);
- The requested use will have a substantial and undue adverse effect on the character of the neighborhood (UDC 9.8.6A);

- The requested use will have a substantial and undue adverse effect on the parking in the area and cannot be served adequately by essential public facilities such as parking, streets and other vital infrastructure (UDC 9.8.6A & C); and
- The requested use will result in the destruction, loss and damage of a feature of significant historic importance (UDC 9.8.6D).

It is important to understand the historical context of the proposed hotel development. On May 18, 2018, the City of Memphis, the Downtown Memphis Commission, the Memphis Center City Revenue Finance Corporation, THM Memphis Acquisitions, LLC (“THM”), and Loews Hotels Holding Corporation (“Loews”) entered into a letter of intent to for the redevelopment of 100 North Main, 80 North Main, and associated properties. The project became known as the Memphis Gateway Development Project. On August 28, 2018, the Memphis City Council passed the Resolution purporting to authorize, among other things, Memphis’ request that the Memphis Gateway Development Project be designated as a Qualified Public Use Facility under the TDZ Act. The Resolution sought approval of, among other things, a “high quality convention hotel with at least five hundred (500) rooms, with related meeting space, retail, amenities and **parking**,” which the Resolution collectively defined as the “Hotel.”

Mayor Strickland subsequently filed a Master Plan Supplement with the Tennessee Department of Finance and Administration seeking certification of the “Hotel” as a “qualified public use facility within the Downtown TDZ” and requesting that “a Convention Center Hotel containing at least five hundred (500) rooms to be constructed on the site located between 140 and 170 North Main Street, Memphis, Tennessee, together with related retail, **parking** and commercial uses to be located at 80 and 100 North Main Street, Memphis, Tennessee, be designated as a Qualified Public Use Facility . . . .” The City described the project as spanning “two blocks along N. Main Street, encompassing 80 N. Main and 100 N. Main and a City-owned plaza across from Memphis City Hall” and provided a summary, which showed that the Memphis Gateway Development Project consisted of the following:

- A Loews hotel with ~550 guestrooms and ~55,000 square feet of meeting space;
- Luxury apartments at 100 N. Main Street;
- 80,000 square feet of hotel amenities located at 100 N. Main and 80 N. Main; and
- **A 1,200-car parking garage.**

The Memphis Gateway Development Project was to be jointly constructed by two development partners, THM, which owned (or through an affiliate owned) 80 N. Main and 100 N. Main, and Loews, which was going to develop the hotel portion of the Memphis Gateway Development Project. However, on April 18, 2019, the City, the Downtown Memphis Commission, and the Memphis Center City Revenue Finance Corporation entered into a new letter of intent with Loews, excluded THM from the new project, and substantially and negatively changed the project, effectively abandoning the Memphis Gateway Development Project, in favor of pursuing a new, single Loews-only hotel project.

There are substantial differences between the now-abandoned Memphis Gateway Development Project and the new single hotel project. The Memphis Gateway Development Project's hotel amenities, meeting space, luxury apartments, **and parking**, which were to be located at THM's 80 N. Main and 100 N. Main, have been entirely eliminated from the single hotel project, which is comprised of a single hotel on City-owned land – largely on Memphis' most iconic civic square. The previously-proposed public amenities have been omitted. Most notably for purposes of the Special Use Permit, the 1,200 hundred-space parking lot formerly proposed as part of the overall project has been eliminated.<sup>2</sup> As proposed, the project will have a substantial and undue adverse effect on the localized parking and cannot adequately be served by the existing infrastructure. Without more, the SUP Application should be denied.

In addition to the proposed use's failure to adequately address parking and other infrastructure issues, the single hotel project will have a substantial and undue adverse effect on the character of the neighborhood. It will destroy a vibrant civic center, joining together the people with the majority of local government. Civic Square is the people's lobby to its city, county, state and federal government, and provides a place for public gathering and discourse. Dismissing the importance of public spaces, the letter submitted by Kimley-Horn in support of the SUP Application states “[t]he existing property is being used as a public plaza with fountains and benches” and claims the “requested hotel use offers a more productive use of the property.” We strongly disagree. This approach is short-sight and would cause irreparable harm to the City of Memphis and its residents. Such harm far outweighs any benefit offered by the proposed use.

The Civic Square has been instrumental in shaping the history of the City of Memphis. By way of best example only, the square played a pivotal civic role following the April 4, 1968 assassination of Dr. Martin Luther King, Jr.:



*Peaceful mass march on the Civic Square in memory of Dr. Martin Luther King Jr., days after his assassination.*

<sup>2</sup> The April 18, 2019, LOI provides only the aspirational (and greatly reduced) goal that “Subject to the policies of the Downtown Parking Authority (“DPA”), the City agrees to use its best efforts to cause DPA to enter into a lease to Lowes not less than 250 parking spaces located within three (3) blocks of the Hotel for a period of 30 years (subject to extension for up to 99 years in the aggregate) at 90% of the fair market value thereof.”



*Coretta Scott King and actor/activist Harry Belafonte speak to a crowd gathered on the Civic Square on April 8, 1968 following a peaceful memorial march through downtown Memphis.*



*Coretta Scott King and her children on the Civic Square on April 8, 1968 after leading a peaceful memorial march through downtown Memphis.*



*Bishop B. Julian Smith (Christian Methodist Episcopal Church), Jerry Wurf (AFSCME International President), Walter P. Reuther (UAW President), and Don Slaiman (AFL-CIO Civil Rights Director) join in mourning with a crowd gathered on the Civic Square on April 8, 1968.*



*15,000 people gathered on the Civic Square to peacefully participate in the April 4, 1969 commemoration ceremony on the first anniversary of Dr. Martin Luther King Jr.'s assassination.*



*Senator Edward Kennedy addresses a crowd gathered on the Civic Square for the April 4, 1969 commemoration ceremony on the first anniversary of Dr. Martin Luther King Jr.'s assassination.*

There are, of course more recent uses of the civic square for public discourse. This civic public square has historically been a place for the people of Memphis to gather. Notably, the iconic trolley stop tower (see below) will be demolished, and the trolley's future placed at risk



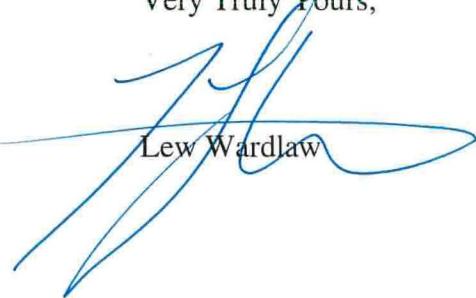
Civic Square is part of the fabric of our community – whether it used for peaceful protest or for public grief; for the enjoyment of public music or to just playing in the fountains; or for nothing more than standing in the midst of the inter-connected space connecting our three branches of government.

If the SUP Application is approved, this history is to be destroyed, and replaced with “a restaurant, food and beverage areas, and a pool/observation deck,” along with an Adams to Exchange roadway over what used to be historic grounds. The permanent destruction of the Civic Square will result in the loss of a civic space of significant historic importance.

The proposed project is not compatible with the immediate vicinity. It would destroy the Civic Square on which those in the vicinity thrive. The development would have a substantial and undue adverse effect upon adjacent property, and the character of the neighborhood. Finally, the project cannot be served adequately by public facilities. In addition to the lack of parking and other vital infrastructure, the proposed project itself is the cause of the destruction of the most significantly historic public gathering space in Memphis.

On these bases, we ask the LUCB to deny the SUP Application. I am happy to address any questions you may have.

Very Truly Yours,



Lew Wardlaw